



Kenai Peninsula Borough

144 North Binkley Street
Soldotna, AK 99669

Meeting Agenda Planning Commission

Blair Martin, Chair – Kalifornsky Beach
Robert Ruffner, Vice Chair – Kasilof/Clam Gulch
Syverine Abrahamson-Bentz, Parliamentarian – Anchor Point/Ninilchik
Jeremy Brantley – Sterling
Cindy Ecklund – City of Seward
Pamela Gillham – Ridgeway
Davin Chesser – Northwest Borough
Diane Fikes – City of Kenai
Virginia Morgan – East Peninsula
Franco Venuti – City of Homer

Monday, November 29, 2021

7:30 PM

Betty J. Glick Assembly Chambers

Zoom Meeting ID: 208 425 9541

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**2. Planning Commission Resolutions****3. Plats Granted Administrative Approval**

- a. [KPB-3715](#) East Cohoe Subdivision Hedger Replat; KPB File 2021-120

Attachments: [Corea Bend Subdivision 2021 Replat 2021-128](#)

- b. [KPB-3716](#) Kenai Landing Subdivision 2021 Addition; KPB File 2021-089

Attachments: [Kenai Landing Subdivision 2021 Addition 2021-089](#)

- c. [KPB-3717](#) Melickian Subdivision 2021 Addition; KPB 2021-094

Attachments: [Melickian Subdivision 2021 Addition 2021-094](#)

- d. [KPB-3718](#) Ninilchik Airport Heights 2021 Replat; KPB File 2021-103

Attachments: [Ninilchik Airport Heights 2021 Replat 2021-103](#)

- e. [KPB-3719](#) Ninilchik River Estates Subdivision Addn. 1 McLean Addn
KPB File 2021-108

Attachments: [Ninilchik River Estates Subdivision Addn 1 McLean Addn 2021-108](#)

- f. [KPB-3720](#) Quandt Subdivision Newton-Segura Addition; KPB File 2020-056

Attachments: [Quandt Subdivision Newton-Segura Addition 2020-056](#)

- g. [KPB-3721](#) Skyline Drive Subdivision 2020 Replat; KPB 2020-062

Attachments: [Razdolna Subdivision 2020 Addition 2020-104](#)

- h. [KPB-3722](#) Willard Point; KPB File 2021-056
Attachments: [Willard Point 2021-056](#)
- i. [KPB-3735](#) Browns Acres Subdivision 2021; KPB File 2021-072
Attachments: [Browns Acres Subdivision 2021 2021-072](#)
- j. [KPB-3736](#) Causeway Subdivision 2021 Replat; KPB File 2021-138
Attachments: [Causeway Subdivision 2021 Replat 2021-138](#)
- k. [KPB-3737](#) Goodrich Acres Sanchis Replat; KPB File 2021-008
Attachments: [Goodrich Acres Sanchis Replat](#)
- l. [KPB-3738](#) Green Forest Subdivision Black Addition; KPB File 2021-010
Attachments: [Green Forest Subdivision Black Addition 2021-010](#)
- m. [KPB-3739](#) Hollywood Park Koch Addition; KPB File 2020-033
Attachments: [Hollywood Park Koch Addition 2020-033](#)
- n. [KPB-3740](#) Kuchta Estates Hansen Addition; KPB File 2021-119
Attachments: [Kuchta Estates Hansen Addition 2021-119](#)
- o. [KPB-3741](#) Willard Point; KPB File 2021-056
Attachments: [Willard Point 2021-056](#)
4. Plats Granted Final Approval (KPB 20.10.040)
- a. [KPB-3723](#) Corea Bend Subdivision 2021 Replat; KPB 2021-128
Attachments: [Corea Bend Subdivision 2021 Replat 2021-128](#)
5. Plat Amendment Request
6. Commissioner Excused Absences
7. Minutes
- a. [KPB-3724](#) November 8, 2021 Planning Commission Meeting Minutes
Attachments: [PC Minutes 110821 Draft](#)

D. OLD BUSINESS

E. NEW BUSINESS

1. [KPB-3713](#) Building Setback Encroachment Permit
Naff Subdivision Part Two, Lot 2, Block 1

 Attachments: [1. MAP Vicinity](#)
 [2. MAP Aerial Map](#)
 [3. Plat As-Built KPB 2021-145](#)
 [4. Staff Report BSE Naff Sub Part Two Lot 2 Block 1 KPB 2021-145](#)
 [5. Resolution Naff Sub Part Two Lot 2 Block 1 BSE KPB 2021-145](#)
 [6. MAP Aerial Map 2](#)
 [7. Plat Parent KN 84-275](#)

2. [KPB-3712](#) Ordinance 2021-40: An ordinance amending KPB 2.40.015 regarding
Planning Commission membership and apportionment.

 Attachments: [1.Assembly Memo ORD 2021-40](#)
 [2.ORD 2021-40](#)
 [3.REF ORD 2016-25](#)
 [4.City Comments & Resolutions](#)
 [5.PC Amendments PowerPoint](#)
 [6.Planning Commission Seats - Census](#)
 [7.Mayors & City Managers PC Ltr 11.19.2021](#)

F. PLAT COMMITTEE REPORT**G. OTHER****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

- [KPB-3742](#) Directors Report

 Attachments: [Director's Report 112921](#)

J. COMMISSIONER COMMENTS**K. ADJOURNMENT**

**MISCELLANEOUS INFORMATIONAL ITEMS
NO ACTION REQUIRED**

[KPB-3714](#) Nikiski Soil Treatment Facility Information

Attachments: [Nikiski Soil Treatment Facility Info_R](#)

NEXT REGULARLY SCHEDULED PLANNING COMMISSION MEETING

The next regularly scheduled Planning Commission meeting will be held Monday, December 13, 2021 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**

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.



Planning Department

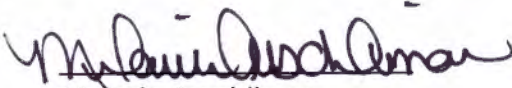
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Charlie Pierce
Borough Mayor

FINAL APPROVAL OF PLAT SUBMITTED UNDER 20.10.040


Subdivision: Corea Bend Subdivision 2021 Replat
 KPB File 2021-128
 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 November 15, 2021.


Melanie Aeschliman
Planning Director

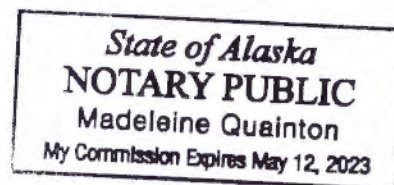
State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 15 day of November 2021
by Melanie Aeschliman.



Notary Public for the State of Alaska

My commission expires: 5/12/23



The survey firm has been advised of additional requirements, if any, to be complied with prior to recording. After the original mylar has been signed by the KPB official, it must be filed with the appropriate district recorder within ten business days by the surveyor or the Planning Department.



Planning Department

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Charlie Pierce
Borough Mayor

ADMINISTRATIVE APPROVAL

Subdivision: Kenai Landing Subdivision 2021 Addition
KPB File 2021-089
Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on July 12, 2021. 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 November 8, 2021.

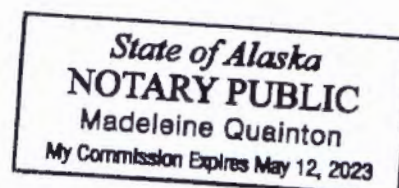
Scott A. Huff
Platting Manager

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 8 day of November 2021
by Scott A. Huff.

Notary Public for the State of Alaska

My commission expires: 5/12/23



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Planning Department

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Charlie Pierce
Borough Mayor

ADMINISTRATIVE APPROVAL

Subdivision: Melickian Subdivision 2021 Addition
KPB File 2021-094
Seward Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on August 9, 2021. 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 November 17, 2021.

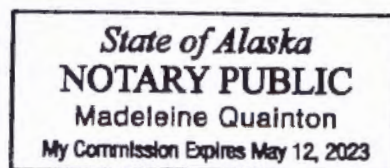
Melanie Aechliman
Planning Director

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 17 day of November 2021
by Melanie Aechliman.

Notary Public for the State of Alaska

My commission expires: 5/12/23



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Planning Department

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Charlie Pierce
Borough Mayor

ADMINISTRATIVE APPROVAL

Subdivision: Ninilchik Airport Heights 2021 Replat
KPB File 2021-103
Homer Recording District

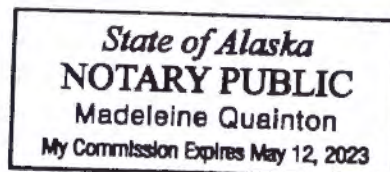
The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on August 9, 2021. Approval for the plat is valid for two years from the date of approval.

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 November 5, 2021.

Scott A. Huff
Platting Manager

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 5 day of November 2021
by Scott A. Huff.

Notary Public for the State of Alaska

My commission expires: 5/12/23

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Planning Department

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Charlie Pierce
Borough Mayor

ADMINISTRATIVE APPROVAL

Subdivision: Ninilchik River Estates Subdivision Addn 1 McLean Addn
KPB File 2021-108
Homer Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on August 23, 2021. 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 November 8, 2021.

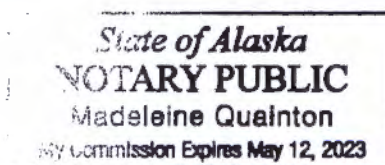
Scott A. Huff
Platting Manager

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 8 day of November 2021
by Scott A. Huff.

Notary Public for the State of Alaska

My commission expires: 5/12/23



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Charlie Pierce
Borough Mayor

ADMINISTRATIVE APPROVAL

Subdivision: Quandt Subdivision Newton-Segura Addition
KPB File 2020-056
Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on July 13, 2020. 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 November 10, 2021.

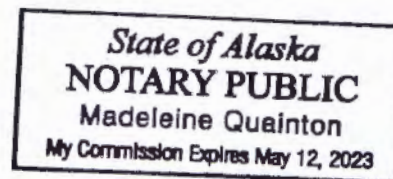
Scott A. Huff
Platting Manager

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 10 day of November 2021
by Scott A. Huff.

Notary Public for the State of Alaska

My commission expires: 5/12/23



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Planning Department

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Charlie Pierce
Borough Mayor

ADMINISTRATIVE APPROVAL

Subdivision: Razdolna Subdivision 2020 Addition
KPB File 2020-104
Homer Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on September 14, 2020. 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 November 8, 2021.

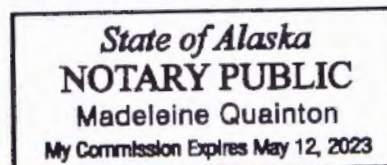
Scott A. Huff
Platting Manager

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 8 day of November 2021
by Scott A. Huff.

Notary Public for the State of Alaska

My commission expires: 5/12/23



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Planning Department

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Charlie Pierce
Borough Mayor

ADMINISTRATIVE APPROVAL

Subdivision: Willard Point
KPB File 2021-056
Homer Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on May 10, 2021. 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 November 15, 2021.

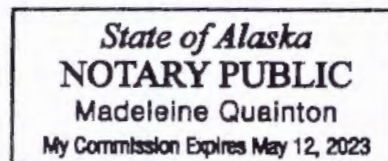
Melanie Aeschliman
Planning Director

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 15th day of November 2021 by Melanie Aeschliman.

Notary Public for the State of Alaska

My commission expires: 5/12/23



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Planning Department

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Charlie Pierce
Borough Mayor

ADMINISTRATIVE APPROVAL

Subdivision: Browns Acres Subdivision 2021
KPB File 2021-072
Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on June 14, 2021. 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 November 18, 2021.

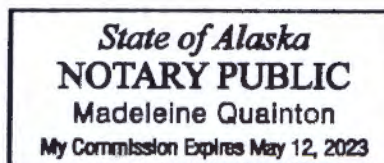
Melanie Aechliman
Planning Director

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 19 day of November 2021
by Melanie Aechliman.

Notary Public for the State of Alaska

My commission expires: 5/12/23



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Planning Department

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Charlie Pierce
Borough Mayor

ADMINISTRATIVE APPROVAL

Subdivision: Causeway Subdivision 2021 Replat
KPB File 2021-138
Seward Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on October 25, 2021. 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 November 18, 2021.

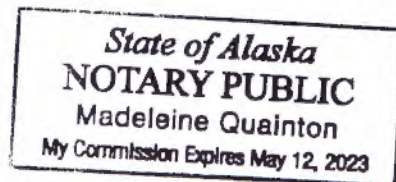
Melanie Aeschliman
Planning Director

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this ¹⁸th day of ^{November} ~~August~~ 2021 by Melanie Aeschliman.

Notary Public for the State of Alaska

My commission expires: 5/12/23



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Charlie Pierce
Borough Mayor

ADMINISTRATIVE APPROVAL

Subdivision: Goodrich Acres Sanchis Replat
KP8 File 2021-008
Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on February 22, 2021. 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 November 18, 2021.

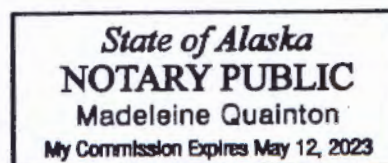
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Kenai Peninsula Borough

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Charlie Pierce
Borough Mayor

ADMINISTRATIVE APPROVAL

Subdivision: Green Forest Subdivision Black Addition
KPB File 2021-010
Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on March 5, 2021. 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 November 19, 2021.

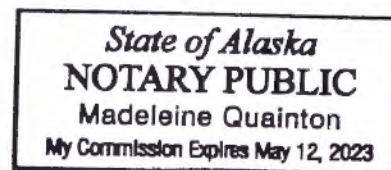
Melanie Aechliman
Planning Director

State of Alaska
Kenai Peninsula Borough

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Charlie Pierce
Borough Mayor

ADMINISTRATIVE APPROVAL

Subdivision: Hollywood Park Koch Addition
KPB File 2020-033
Homer Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on January 11, 2021. 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 November 18, 2021.

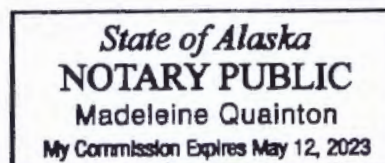
Melanie Aechliman
Planning Director

State of Alaska
Kenai Peninsula Borough

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by Melanie Aechliman.

Notary Public for the State of Alaska

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Charlie Pierce
Borough Mayor

ADMINISTRATIVE APPROVAL

Subdivision: Kuchta Estates Hansen Addition
KPB File 2021-119
Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on September 13, 2021. 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 November 18, 2021.

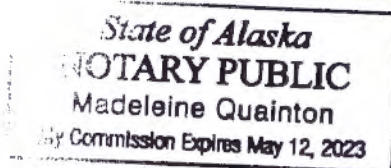
Melanie Aeschliman
Planning Director

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this ¹⁸th day of ^{November} ~~August~~ 2021 by Melanie Aeschliman.

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Charlie Pierce
Borough Mayor

ADMINISTRATIVE APPROVAL

Subdivision: Willard Point
KPB File 2021-056
Homer Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on May 10, 2021. 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 November 15, 2021.

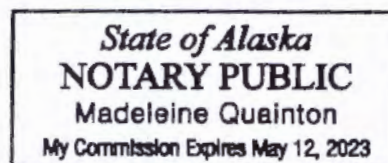
Melanie Aeschliman
Planning Director

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 15th day of November 2021 by Melanie Aeschliman.

Notary Public for the State of Alaska

My commission expires: 5/12/23



The survey firm has been advised of additional requirements, if any, to be complied with prior to recording. After the original mylar has been signed by the KPB official, it must be filed with the appropriate district recorder within ten business days by the surveyor or the Planning Department.



Planning Department

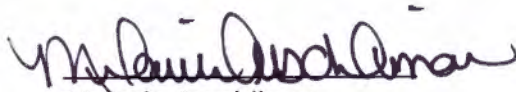
144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2200 • (907) 714-2378 Fax

Charlie Pierce
Borough Mayor

FINAL APPROVAL OF PLAT SUBMITTED UNDER 20.10.040

Subdivision: Corea Bend Subdivision 2021 Replat
 KPB File 2021-128
 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 November 15, 2021.


Melanie Aeschliman
Planning Director

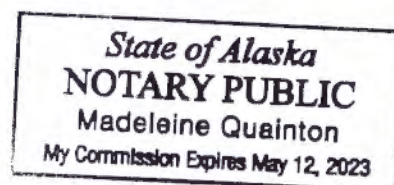
State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 15 day of November 2021
by Melanie Aeschliman.



Notary Public for the State of Alaska

My commission expires: 5/12/23



The survey firm has been advised of additional requirements, if any, to be complied with prior to recording. After the original mylar has been signed by the KPB official, it must be filed with the appropriate district recorder within ten business days by the surveyor or the Planning Department.

Kenai Peninsula Borough Planning Commission

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

November 8, 2021

7:30 P.M.

UNAPPROVED MINUTES

Zoom Only Meeting

CALL TO ORDER

Chair Ruffner called the meeting to order at 7:30 p.m.

ROLL CALL

Commissioners Present

Syverine Bentz, Anchor Point/ Ninilchik
Jeremy Brantley, Sterling
Diane Fikes, City of Kenai
Pamela Gillham, Ridgeway
Blair Martin, Kalifornsky Beach
Virginia Morgan, East Peninsula
Robert Ruffner, Kasilof/Clam Gulch
Franco Venuti, City of Homer

With 8 members of an 11-member commission in attendance, a quorum was present.

Staff Present

Melanie Aeschliman, Planning Director
Sean Kelly, Borough Attorney
Samantha Lopez, Manager Kenai River Center
Bryan Taylor, Planner
Ann Shirnberg, Planning Administrative Assistant

Commissioner Martin was concerned that his internet connection was not stable and so he requested that Commission Ruffner chair the meeting.

AGENDA ITEM C. CONSENT & REGULAR AGENDAS

- *3. Plat Granted Administrative Approval
 - a. Alder Slopes 2021 Replat; KPB File 2021-017
 - b. Anchor River S J Chapman Jeppesen 2021 Replat; KPB File 2021-040
 - c. Bay View Subdivision 2021; KPB File 2021-087
 - d. Fair Wind Subdivision 2020; KPB File 2020-045
 - e. Lillian Walli Estate 2020 Replat; KPB File 2020-119
 - f. Riverwind II 2020 Addition; KPB File 2020-127
 - g. Spruce Woods TR-1 Replat; KPB File 2021-091
 - h. Stanleys Meadow 2021; KPB File 2021-086
 - i. Vineyard Estates 2021 Addition; KPB File 2021-014
- *4. Plats Granted Final Approval
 - a. Homewood Subdivision Murdock Addition; KPB File 2021-124
 - b. Little Subdivision 2020 Replat; KPB File 2020-046
- *6. Commissioner Excused Absences
 - a. Vacant, Northwest Borough
 - b. Vacant, City Seat
 - c. Vacant, City Seat

***7 Minutes**

- a. October 18, 2021 Planning Commission Hearings
- b. October 25, 2021 Plat Committee Meeting
- c. October 25, 2021 Planning Commission Meeting

Chair Ruffner asked if anyone present wanted to speak to any of the items on the consent or regular agendas. He then asked Ms. Shirnberg to read the items under the consent agenda into the record.

Hearing no one else wishing to comment, Chair Ruffner returned the discussion to the Commission.

MOTION: Commissioner Gillham moved, seconded by Commissioner Bentz to approve the consent agenda and the regular agenda.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	8	No	0	Absent	0	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Martin Morgan, Ruffner, Venuti						

Chair Ruffner asked Ms. Shirnberg to read the procedures for public testimony.

AGENDA ITEM E. NEW BUSINESS**1. Retail Marijuana Store License**

Applicant: Back Alley Vapes

Landowner(s): Jesse Spurgeon & Rebecca Spurgeon

Parcel ID#: 012-090-04

Legal Description: T07N, R12W, SEC 1, S.M., KN 0001400 NIKISHKA SUB NO 2 LOT 4 BLK 2

Location: 51698 KENAI SPUR HWY, Nikiski, AK

Staff report given by Bryan Taylor.

BACKGROUND INFORMATION: On March 4, 2021, the borough received notification from the Alcohol and Marijuana Control Office (AMCO) that the applicant had initiated the application to the state for a Retail Marijuana Store license. On March 15, 2021, the applicant supplied the borough with a signed acknowledgement form and a site plan of the proposed marijuana retail store on the above-described parcel. The AMCO notified the borough that the application was complete on October 1, 2021. Staff has reviewed the completed license application that had been submitted to the state and the site plan submitted to the borough and has found the following concerning the standards contained in KPB 7.30.020:

1. The Borough finance department has been notified of the complete application and they report that the applicant is in compliance with the borough tax regulations.
2. Borough planning department staff has evaluated the application and has determined that the proposed facility will be located greater than 1,000 feet from any school.
3. Borough planning department staff has evaluated the application and has determined that the proposed facility will be located greater than 500 feet from all recreation or youth centers, and all buildings in which religious services are regularly conducted, and all correctional facilities.
4. The proposed facility is not located within a local option zoning district.
5. The proposed facility is located where there is sufficient ingress and egress for traffic to the parcel.
 - KPB 7.30.020(C)(1)(a) requires that, except for limited cultivation facilities, marijuana establishments shall be located where an approach meeting a borough right-of-way had a minimum width of 24 feet.

- The signed acknowledgement form indicates that there will not be any parking in borough rights-of-way.
 - The site plan indicates a clear route for delivery vehicles which allows vehicles to turn safely.
 - On-site parking and loading areas are designated at a location that would preclude vehicles from backing out into the roadway.
6. The signed acknowledgement form indicates that the proposed facility will not conduct any business on, or allow any consumer to access, the retail marijuana store's licensed premises, between the hours of 2:00 a.m. and 8:00 a.m.

KPB 7.30.020(E) allows the recommendation of additional conditions on a license to meet the following standards:

- protection against damage to adjacent properties,
- protection against offsite odors,
- protection against noise,
- protection against visual impacts,
- protection against road damage,
- protection against criminal activity, and
- protection of public safety.

The Alaska Marijuana Control Board will impose a condition that a local government recommends unless the board finds the recommended condition is arbitrary, capricious, and unreasonable (3 ACC 306.060b). If the Planning Commission recommends additional conditions, additional findings must be adopted to support the conditions.

PUBLIC NOTICE: Public notice of the application was mailed on October 22, 2021, to the 12 landowners of the parcels within 300 feet of the subject parcel. Public notice of the application was published in the October 28, 2021, & November 4, 2021, issues of the Peninsula Clarion.

Staff recommends that the Planning Commission forward this application to the assembly with the findings contained in this staff report and with the recommendation that the following conditions be placed on the state license pursuant to 3 AAC 306.060(b):

1. The marijuana establishment shall conduct their operation consistent with the site plan submitted to the Kenai Peninsula Borough.
2. There shall be no parking in borough rights-of-way generated by the marijuana establishment.
3. The marijuana establishment shall remain current in all Kenai Peninsula Borough tax obligations consistent with KPB 7.30.020(A).

Mr. Taylor then noted that he needed to add a fourth condition to the recommendation:

4. The marijuana establishment shall not conduct any business on, or allow any consumer to access, the retail marijuana store's licensed premises, between the hours of 2:00 a.m. and 8:00 a.m.

END OF STAFF REPORT

Chair Ruffner opened the meeting for public comment.

Jesse Spurgeon, Applicant; 51698 Kenai Spur Hwy., Suite D, Nikiski, AK 99635: Mr. Spurgeon made himself available for any questions the commission may have.

Hearing no one else wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Bentz moved, seconded by Commission Morgan to forward to the Assembly the application for a retail marijuana store license for Back Alley Vapes with staff's findings and recommending the following four conditions be placed on the license:

1. The marijuana establishment shall conduct their operation consistent with the site plan submitted to the Kenai Peninsula Borough.
2. There shall be no parking in the borough rights-of-way generated by the marijuana establishment.
3. The marijuana establishment shall remain current in all Kenai Peninsula Borough tax obligations consistent with KP.B 7.30.020 (A).
4. The marijuana establishment shall not conduct any business on, or allow any consumer to access, the retail marijuana store's licensed premises, between the hours of 2:00 a.m. and 8:00 am

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	8	No	0	Absent	0	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti						

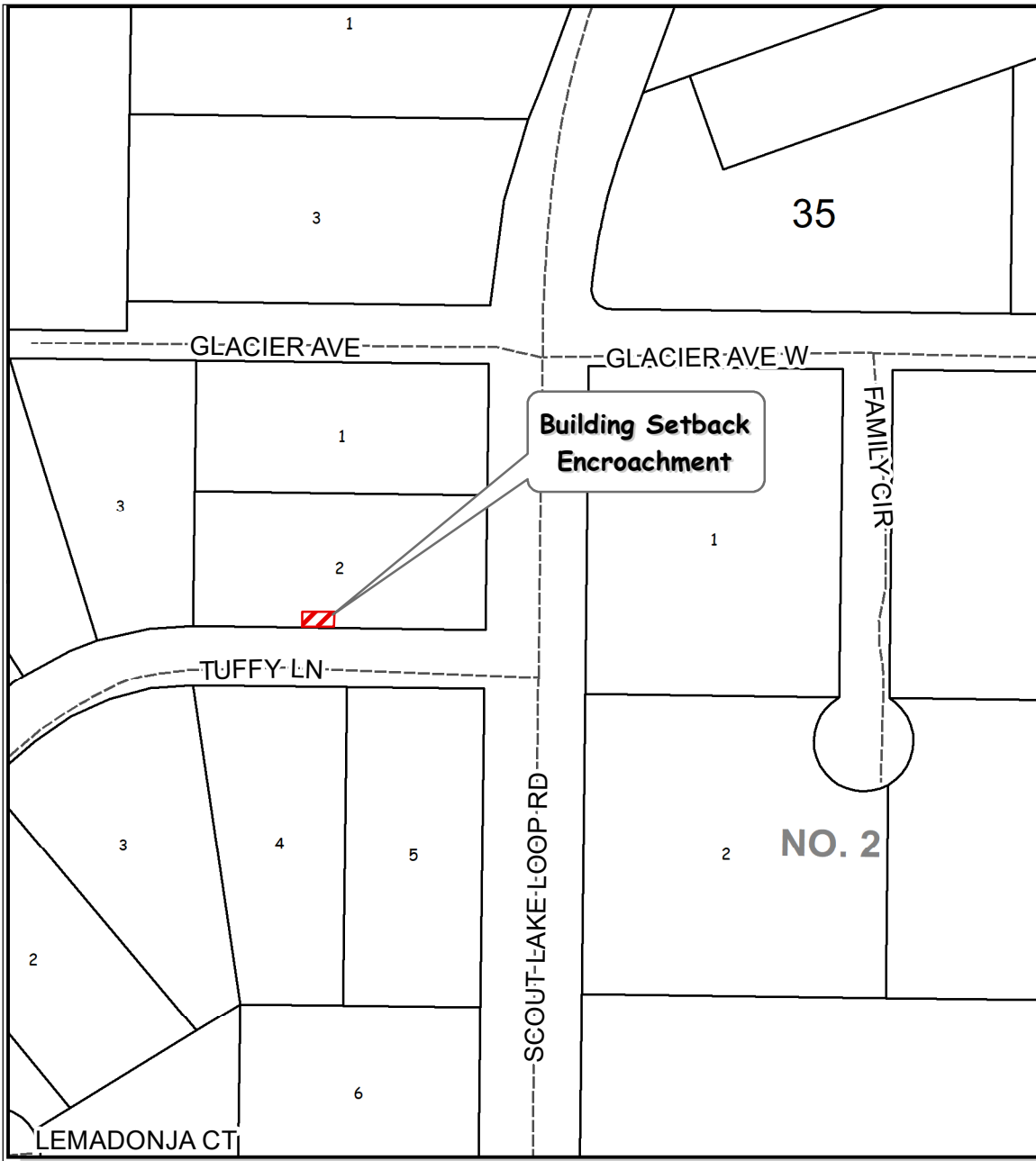
AGENDA ITEM F. **PLAT COMMITTEE REPORT** – Plat Committee did not meet.

AGENDA ITEM I. **DIRECTOR'S COMMENTS**

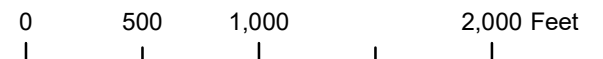
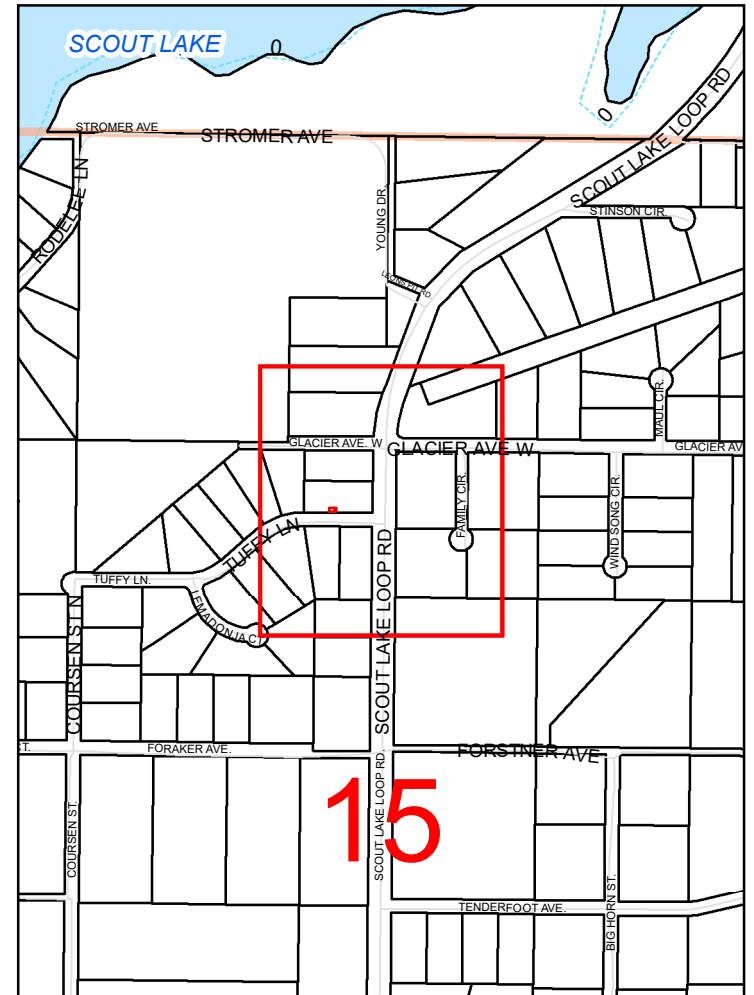
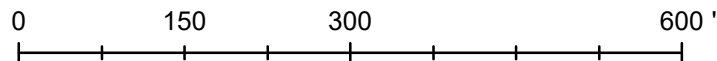
AGENDA ITEM J. **COMMISSIONER COMMENTS**

AGENDA ITEM M. **ADJOURNMENT** – Commissioner Morgan moved to adjourn the meeting at 7:50 p.m.

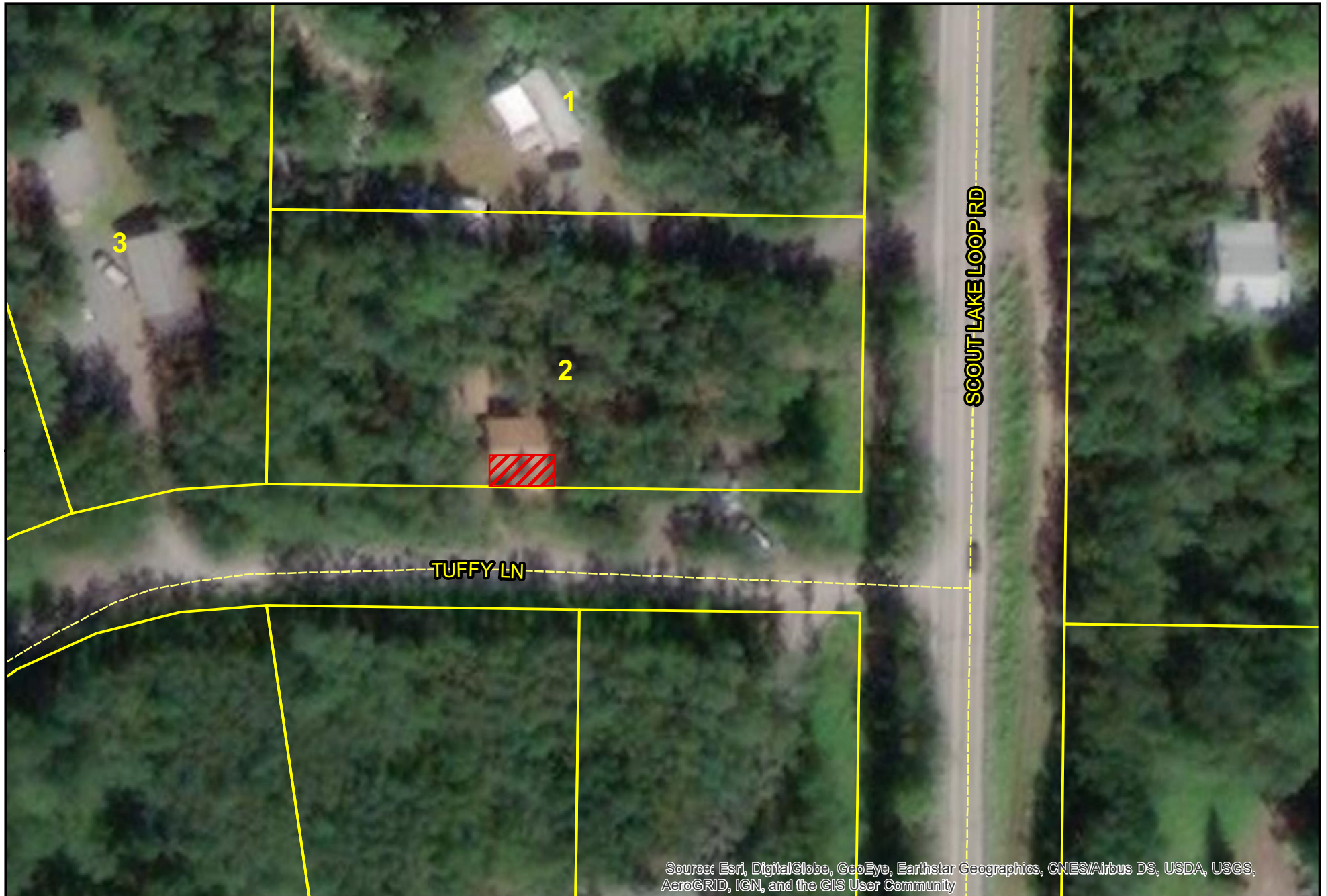
Ann E. Shirnberg
Administrative Assistant



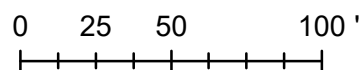
The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.



KPB 2021-145
S15 T05N R09W
Sterling




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.



Aerial View



 Building Setback

PClements, KPB 2021-145
ImageryWorld

100' R/W SCOUT LAKE LOOP ROAD

S 00°02'50" E 135.32

NOTES

THIS SURVEY IS SUBJECT TO ANY FACTS THAT MAY BE DISCLOSED BY A FULL AND ACCURATE TITLE SEARCH.

ALL BOUNDARY DATA SHOWN IS OF RECORD INFORMATION UNLESS OTHERWISE NOTED.

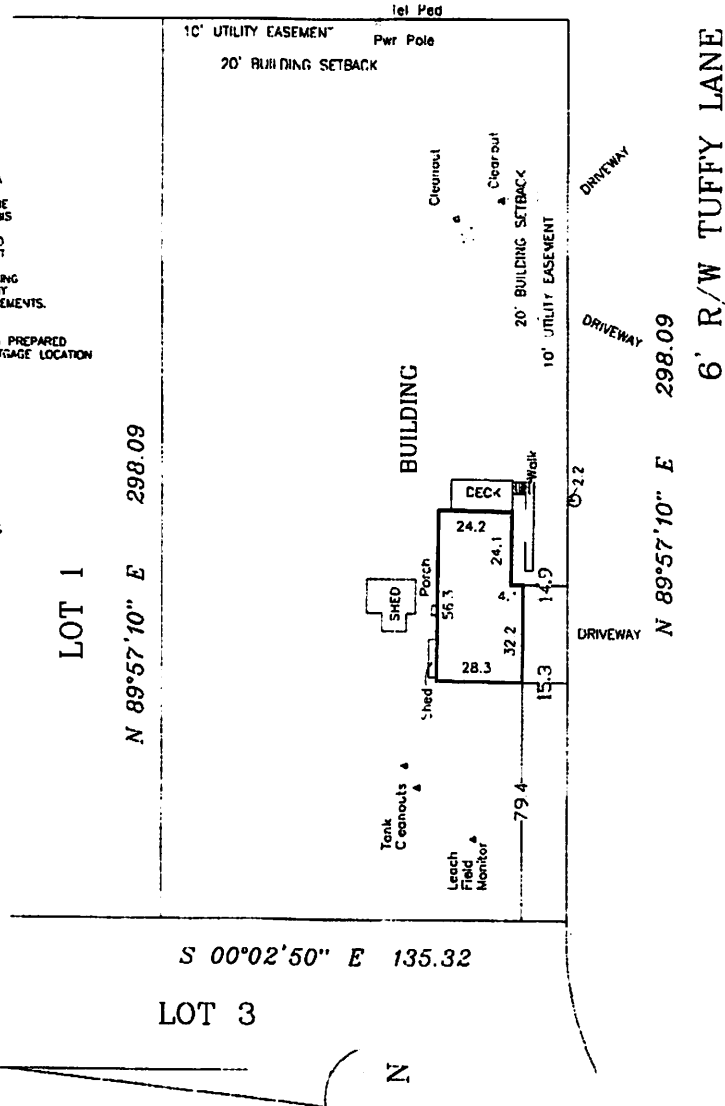
THIS MORTGAGE LOCATION SURVEY IS A REPRESENTATION OF THE CONDITIONS THAT WERE FOUND AT THE TIME OF THE LOCATION SURVEY WAS PERFORMED. THIS DOCUMENT DOES NOT CONSTITUTE A BOUNDARY SURVEY AND IS SUBJECT TO ANY INACCURACIES THAT A SUBSEQUENT BOUNDARY SURVEY MAY DISCLOSE. INFORMATION CONTAINED ON THE DRAWING SHALL NOT BE USED TO ESTABLISH ANY FENCE, STRUCTURE, OR OTHER IMPROVEMENTS.

THIS MORTGAGE LOCATION SURVEY WAS PREPARED IN ACCORDANCE WITH THE ASPLS MORTGAGE LOCATION SURVEY STANDARDS

SEE ANY LOCAL ZONING AUTHORITIES OR COVENANTS THAT MAY APPLY TO THIS PARCEL FOR BUILDING SETBACKS.

SPECIAL NOTE

This document may not be recorded or copies sold without the written permission of the Surveyor. This survey is to be used only for the purposes intended and is valid for 120 days from the date of original survey after which it must be recertified.



Swan Surveying

Michael Swan R.L.S.

P.O. Box 987 • Soldotna AK 99669 • 907-257-6816

71-186	10-21-21	7-40	AKS	CHA
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I hereby certify that I have performed a Mortgage Inspection of the following described property

LOT 2 Block 1 NAFF

SUBDIVISION PART 2

Located in the Kasilof Recording District, Kenai, AK, and that the improvements situated thereon are within the property lines and do not overlap or encroach on the property lines in question and that there are no road ways, transmission lines or other visible easements on said property except as indicated hereon

Dated at Kenai, Alaska this 21 day of October 2021

AS-BUILT

KPB 2021-145

AGENDA ITEM E. NEW BUSINESS

ITEM 1. – BUILDING SETBACK ENCROACHMENT PERMIT
LOT 2 BLOCK 1 NAFF SUBDIVISION PART 2

KPB File No.	2021-145
Planning Commission Meeting:	November 29, 2021
Applicant / Owner:	Ramona C. and Alexander N. Connors
Surveyor:	Mike Swan
General Location:	Tuffy Lane and Scout Lake Loop Road / Sterling

Parent Parcel No.:	063-880-02
Legal Description:	Lot 2 Block 1 Naff Subdivision Part Two (KN 84-275)
Assessing Use:	Residential
Zoning:	Rural Unrestricted

STAFF REPORT

Specific Request / Purpose as stated in the petition:

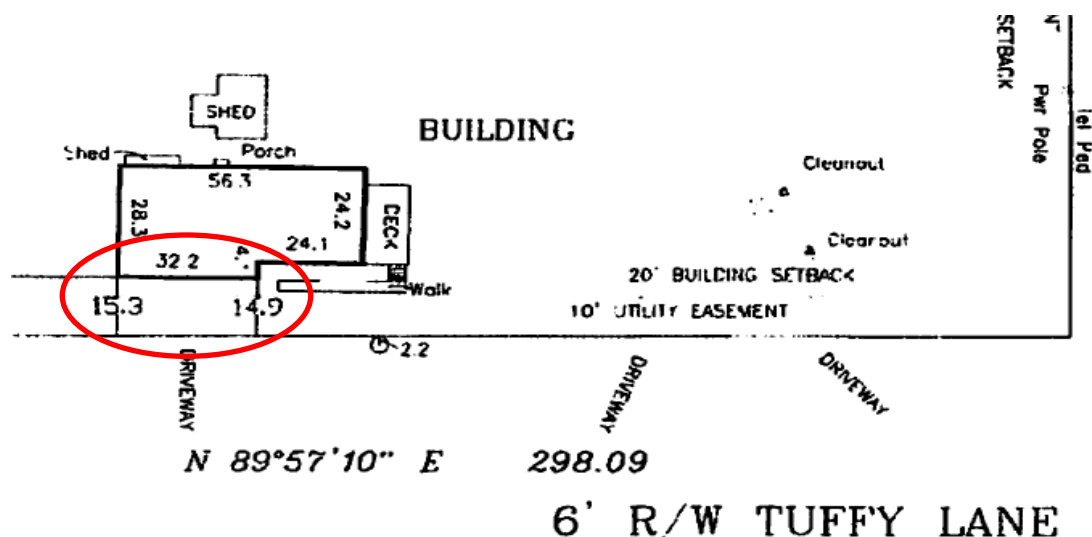
Garage was built approximately 6 years ago by Marvin Shrock Builders. Garage was and is more than 30 feet from the driving or existing road and we never realized we were that close to the right of way.

Site Investigation: Per the as-built, a portion of the garage is within the 20 foot building setback adjoining Tuffy Lane. The structure encroachment varies from 4.7 feet to 5.1 feet into the 20 foot building setback.

The lot is within the Naff Subdivision Part Two, Plat KN 84-275.

Lot 2 Block 1 is located on the corner of Scout Lake Loop Road and Tuffy Lane. Scout Lake Loop Road is a state maintained right of way. Tuffy Lane is constructed but not currently maintained.

The encroachment is within the 20 foot building setback along Tuffy Lane as established by Plat KN 84-275. No improvements are located within the 20 foot building setback adjoining Scout Lake Loop Road. The structure appears to be approximately 186 feet from the intersection of Scout Lake Loop Road and Tuffy Lane.



Staff Analysis: The lot is within Naff Subdivision Part Two, Plat KN 84-275 and is located in the Sterling area. The lot is not within an Advisory Planning Commission boundary.

The building setback was in effect with the recording of Naff Subdivision Part Two in 1984. Per KPB Assessing information, a dwelling was constructed in 2010. Per the application, a garage was added on about six years ago. The garage portion is within the 20 foot building setback. The application states the owners were using the constructed roadway to determine the location for the building addition.

The area is relatively flat and low wet areas are not present on the property. The encroachment is nearly parallel to the right of way and does not appear to affect the line of sight on Tuffy Lane roadway. Tuffy Lane is not currently maintained.

The intersection with Scout Lake Loop Road is approximately 186 feet from the structure and does not affect any setback, line of sight, or maintenance with Scout Lake Loop Road.

Notice was mailed to 36 landowners within 600 feet of the subject lot.

Findings:

1. The garage is located from 4.7 feet to 5.1 feet within the platted 20 foot building setback.
2. Tuffy Lane is a 60 foot wide right of way.
3. Tuffy Lane is partially constructed.
4. Tuffy Lane is not maintained.
5. The portion of Tuffy Lane adjoining Lot 2 Block 1 is straight and slightly curves to the south as the right of way extends to the west.
6. Scout Lake Loop Road is approximately 186 feet east from the building encroachment.
7. The location of the building encroachment does not appear to affect the line of sight on Tuffy Lane.
8. Utilities have been installed in the area.
9. The structure is not within the 10 foot utility easements.
10. KPB Roads Department has no objection to the granting of a building setback encroachment permit.
11. Recent aerial imagery shows room for vehicles to park between the building and roadway.
12. A portion of the building would need to be removed to comply with the 20 foot building setback.

20.10.110. – Building setback encroachment permits.

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

1. The building setback encroachment may not interfere with road maintenance.

Findings 4, 5, 7, 8, 9, 10, 11 appear to support this standard.

2. The building setback encroachment may not interfere with sight lines or distances.

Findings 4, 5, 7, 8, 9, 10, 11 appear to support this standard.

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

Findings 4, 5, 7, 8, 9, 10, 11 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 department / agency review:

KPB Roads Dept. comments	No objection at this time.
SOA DOT comments	No comment
Code Compliance – Eric Ogren	No comment

RECOMMENDATION:

Based on the standards to grant a building setback encroachment permit, **staff recommends** to adopt Resolution 2021-35, subject to compliance with KPB 20.10.110 sections F and G.

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 2021-35
KENAI RECORDING DISTRICT**

GRANT A BUILDING SETBACK ENCROACHMENT PERMIT TO A PORTION OF THE TWENTY FOOT BUILDING SETBACK ADJOINING THE SOUTH BOUNDARY OF LOT 2 BLOCK 1, NAFF SUBDIVISION PART TWO (KN 84-275); IN NW 1/4 SECTION 15, TOWNSHIP 5 NORTH, RANGE 9 WEST; SEWARD MERIDIAN, ALASKA, WITHIN THE KENAI PENINSULA BOROUGH; KPB FILE NO. 2021-145

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, Ramona C. and Alexander N. Connors of Sterling, AK requested a building setback encroachment permit to the 20-foot building setback granted by Naff Subdivision Part Two (KN 84-275); and

WHEREAS, per the petition the asbuilt survey shows that a portion of the garage is within the 20 foot building setback adjoining Tuffy Lane. The structure encroachment varies from 4.7 feet to 5.1 feet into the 20 foot building setback; and

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

WHEREAS, on Monday, November 29, 2021, 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 adjoining the south boundary of Lot 2 Block 1 Naff Subdivision Part Two (KN 84-275), is hereby excepted to accommodate only the encroaching portion of the garage, approximately 4.7' to 5.1', to be within the 20' Building Setback adjoining Tuffy Lane.

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

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

Section 4. 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.

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

Section 6. 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 _____, 2021.

Blair J. Martin, Chairperson
Planning Commission

ATTEST:

Ann Shirnberg,
Administrative Assistant

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

Tuffy Lane

33



05/13/2021

NAFF SUBDIVISION PART TWO

SCOUT LAKE SUBD.

UNSUBD.

MERNAFF SUBD.

LOT - 3

TRACT-2

NAFF SUBD.

TRACT-3

TRACT A

VALERIE SUBD.

TRACT - II

EAGLE SCOUT SUBD.

NE 1/4 SW 1/4
COURSEN SUBD.

CERTIFICATE OF APPROVAL BY THE ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
This subdivision has been reviewed in accordance with
AS 11.70.020 and is approved, subject to any noted restrictions.
Leslie Naff *ESD* *9-28-84*
SIGNATURE TITLE DATE

PLAT APPROVAL

This plat was approved by the KENAI
PENINSULA BOROUGH PLANNING COMMISSION
at the meeting of

MAR 24 1984
KENAI PENINSULA BOROUGH

By *W. J. Burt*
Authorized Official

LEGEND

- BLM or GLO monument recovered
- BLM or GLO monument not recovered
- Found official survey monument
- Set Bernstein 3 1/4" x 30" aluminum survey monument
- Monument of record not recovered
- Found 5/8" rebar
- Set 5/8" x 30" rebar with 2" aluminum cap
- Found 1/2" rebar
- Set 1/2" x 24" rebar

NOTES

- Water supply and sewage disposal systems shall be permitted only in conformance with applicable requirements of 18 AAC 70, 18 AAC 72, and 18 AAC 80.
- BUILDING SET BACK - A building set back of 20 ft. is required from all street rights of ways unless a lesser standard is approved by resolution of the appropriate Planning Commission.
- No direct access to state maintained ROWs permitted unless approved by State of Alaska Department of Transportation.
- Basis of Bearing is the record datum of S00°02'50"E for the N-S centerline of Sec. 15, KR D 78-12.
- The front 10' of the building setback shall be used for a utility easement.

LINE	BEARING	DISTANCE
1	N 89°56'02"E	25.33
2	N 00°02'50"W	30.00
3	N 00°02'50"W	30.00

CURVE	RADIUS	DELTA	TANGENT	ARC	CHORD	CHORD BRG
1	270.00	10°40'19"	25.22	50.29	50.22	N 84°35'53"E
2	270.00	30°19'41"	73.18	142.92	141.26	N 64°05'53"E
3	275.00	41°01'08"	102.87	196.88	192.70	N 69°26'36"E
4	239.67	90°00'00"	239.67	376.47	338.94	S 45°03'58"E
5	24.87	73°10'26"	18.46	31.76	29.65	S 56°58'33"E
6	269.67	22°50'15"	54.47	107.49	106.79	S 22°21'18"E
7	269.67	24°01'09"	57.37	113.05	112.22	S 45°47'00"E
8	269.67	29°05'20"	69.96	136.91	135.45	S 72°20'14"E
9	50.00	97°46'23"	57.29	85.32	75.34	S 85°13'42"E
10	50.00	78°17'35"	40.70	68.32	63.13	N 06°44'19"E
11	50.00	110°05'08"	71.52	86.07	81.96	N 87°27'03"W
12	209.67	74°43'09"	160.07	273.43	254.46	N 48°47'45"W
13	20.00	82°27'26"	17.53	28.78	26.36	S 29°47'32"E
14	300.00	22°05'13"	58.55	115.65	114.93	S 59°58'39"E
15	245.00	41°01'08"	91.65	175.40	171.68	N 69°26'36"E
16	240.00	41°00'00"	89.73	171.74	168.10	N 69°26'02"E
17	305.00	7°06'50"	18.96	37.87	37.85	
18	305.00	15°35'12"	41.74	82.97	82.72	
19	305.00	18°19'05"	49.18	97.51	97.10	

100 50 0 100 200 300
SCALE IN FEET

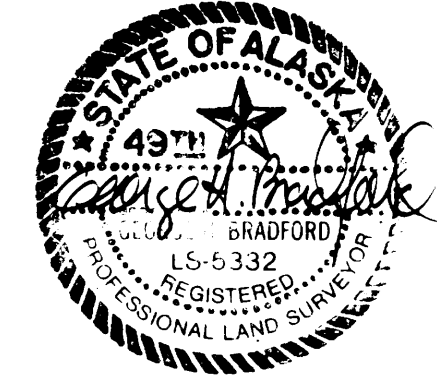
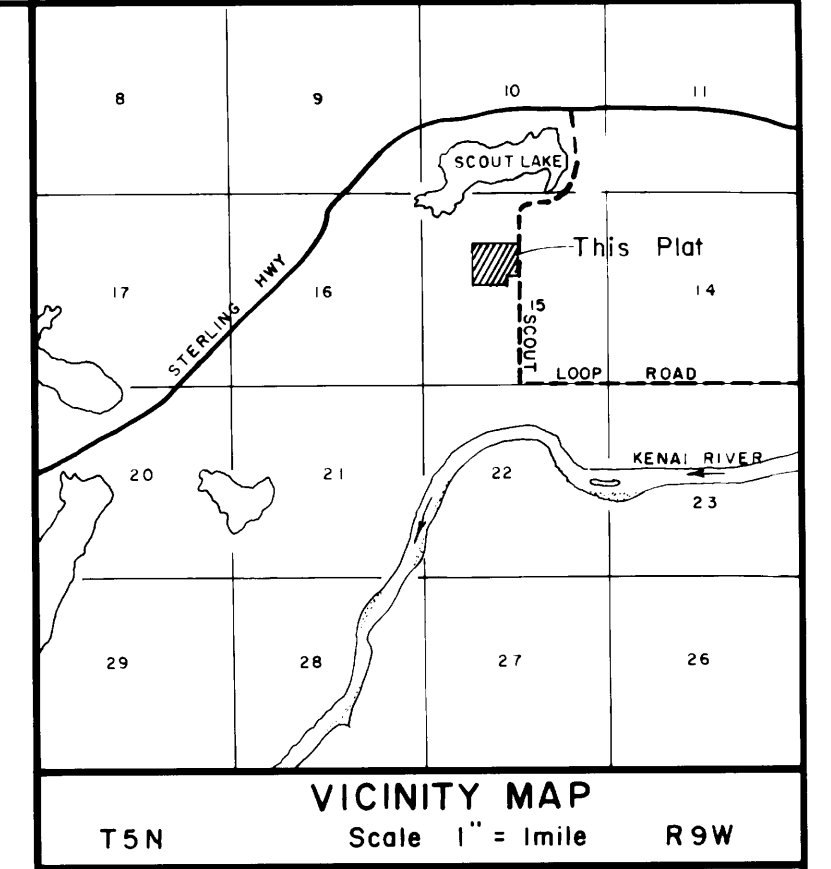
NAFF SUBDIVISION PART TWO

Leslie Naff, owner
Box 1681
Soldotna, AK 99669

37884 AC. ML SITUATED IN THE SE 1/4 NW 1/4
SECTION 15, T5N, R9W, S4 AK, AND IN THE KENAI
PENINSULA BOROUGH.

Surveyed by *McLane Associates, Inc.*
Soldotna, AK 99669

DATE OF SURVEY: 8/21/84	SCALE: 1"=100'	BOOK NO.: 84-24 84-33
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STATE OF ALASKA
NOTARY PUBLIC
GEORGE H. BRADFORD
11-9-87

NOTARY'S ACKNOWLEDGEMENT

FOR: Leslie Naff
Subscribed and sworn before me this
21st day of *SEP.* 1984.
My commission expires *11-9-87*
George H. Bradford
Notary Public for the State of Alaska

CERTIFICATE OF OWNERSHIP AND DEDICATION

We hereby certify that we are the owners of the property
shown and described hereon and that we hereby adopt this plan
of subdivision and dedicate all right-of-ways to public use and
grant all easements to the use shown.

Leslie Naff
Leslie Naff

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Tyson Cox, Assembly Member *TC*
Lane Chesley, Assembly Member *LC*

DATE: October 14, 2021

SUBJECT: Ordinance 2021-40 Amending KPB 2.40.015 Regarding Planning Commission Membership and Apportionment (Cox, Chesley)

This ordinance amends KPB 2.40.015 to clarify code pertaining to planning commission membership and apportionment.

The Assembly will have three questions to contemplate:

How many city seats should be on the planning commission?

The KPB currently has an eleven-member planning commission. There are four city seats which are subject to an informal rotation between five home rule/first class cities and seven at-large seats. This aligns with apportionment rules, but is difficult, if not, impossible to accomplish with five cities rotating four, 3-year term seats. It is mathematically impossible to create an equitable rotation. This is most likely why Ordinance 2016-25 did not specify how city seats would be distributed.

This ordinance would change the number of planning commissioners from eleven back to thirteen with each of the five home rule or first class cities within the borough having a seat and eight at-large seats. This change would solve the rotation dilemma the borough currently has. It would solve any argument between the cities and the borough as to which cities are to be left on the commission and which cities will be required to sit out.

Should cities be required to submit more than one applicant to the KPB Mayor for selection to the planning commission?

This year the KPB Mayor and legal department have made it known that they interpret state statutes and borough code to say that the city-approved list of recommendations submitted to the mayor should be more than one person. The city of Soldotna understands the same statutes and code to allow for a list to consist of only one applicant. Over the past several years most cities have only submitted one applicant for their designated planning commission seat,

as neither borough code nor state statutes designate the specific number of applicants required to be considered a list. Several KPB Mayors have accepted lists with only one city seat applicant, including our current KPB Mayor.

This ordinance would specify that the list of recommendations given to the borough mayor as approved by the city council would consist of at least one applicant from the respective city. In this case one applicant seems the best definition for a list because we often have very few people who choose to apply to serve as a commissioner. If two or more applicants were required, a process would need to be defined to deal with the situation of a city with only one applicant willing to serve on the commission.

Should any eligible resident of the borough be allowed to apply for planning commission city seat or should the applicant be required to be a resident of that city?

Recently the KPB Mayor and legal department made it clear that they believe state law allows for any eligible KPB resident to apply for a planning commission city seat. The city representatives and constituents that we have spoken with do not feel the same. Many of them disagree with this interpretation of the law.

This ordinance would specify that an applicant for a city seat on the planning commission would be required to be a resident of the respective city. Defining who can be seated in a city seat on the planning commission would eliminate any argument that the apportionment to the unincorporated borough could be too high to comply with State of Alaska requirements. If city seats were to be filled with residents from outside the cities, the cities would be inequitably served on the commission.

Your consideration of this ordinance is appreciated.

Introduced by: Cox, Chesley
Date: 10/26/21
Hearing: 12/07/21
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-40**

**AN ORDINANCE AMENDING KPB 2.40.015 REGARDING PLANNING COMMISSION
MEMBERSHIP AND APPORTIONMENT**

WHEREAS, Ordinance 2016-25 (Mayor) Substitute reduced the planning commission membership from 13 members to 11 members, but did not specify how city seats would be distributed; and

WHEREAS, AS 29.40.020(a) requires that planning commission membership be apportioned so that the number of members from home rule and first class cities reflects the proportion of borough population residing in home rule and first class cities located in the borough; and

WHEREAS, based on current census information the required apportionment ratio for an 11 member planning commission would be 7 at-large seats and 4 city seats; and

WHEREAS, there are five incorporated first class or home rule cities within the borough; and

WHEREAS, current code does not identify specific city seats or how they would equitably rotate each year and term; and

WHEREAS, Kenai Peninsula Borough cities have voiced a preference to continue having each of their cities represented on the planning commission each year; and

WHEREAS, based on current census information the required apportionment ratio, for all 5 cities to have a seat on the planning commission each year, the planning commission must be composed of at least 13 members with 8 at-large seats; and

WHEREAS, it is in the best interest of all affected parties that this issue be resolved and defined in code by establishing the seats apportionments that work for all parties while remaining in compliance with state statute; and

WHEREAS, clarity of code is of the utmost importance; and

WHEREAS, the assembly, as the legislative branch of the borough, has the responsibility to define and clarify any portions of KPB code that may come under scrutiny due to opposing interpretations or views as to its meaning; and

WHEREAS, borough code is unclear as to whether or not borough residents who live outside a first class or home rule city's boundaries are eligible to serve as a planning commissioner in a city seat; and

WHEREAS, all members are subject to appointment by the mayor and confirmation by the assembly, provided that members serving on city seats must be selected by the mayor from a list of recommendations submitted by the city council; and

WHEREAS, borough code and state law are unclear as to whether or not the required list of recommendations from a city council for their respective commission seat must include more than one recommended applicant; and

WHEREAS, the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of _____, 2021 recommended _____;

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

SECTION 1. That KPB 2.40.015 is hereby amended as follows:

2.40.015. Membership—Apportionment.

In accordance with AS 29.40.020(a):

- A. The planning commission shall consist of a maximum of [ELEVEN] thirteen members. Commission membership shall be apportioned so that the number of members from home rule and first class cities reflects the proportion of borough population residing in home rule and first class cities located in the borough. No more than one member of the commission may be from any single home rule or first class city in the borough unless more are required to satisfy the statutory apportionment requirement.
- B. City Seats. A city resident [MEMBER] serving on a planning commissioner city seat shall be selected by the mayor from a list of recommendations submitted by the council. The list will consist of at least one applicant from the respective city whose city seat is vacant or expiring [OF ANY CITIES FROM WHICH NO MEMBER WILL BE ON THE COMMISSION WHEN THE VACANCY IS EFFECTIVE, UNLESS APPORTIONMENT REQUIRES MORE THAN ONE MEMBER FROM A CITY. IN THAT EVENT ALL ELIGIBLE CITY COUNCILS MAY SUBMIT A LIST OF RECOMMENDATIONS FOR THE ADDITIONAL SEAT PROVIDED THAT NO CITY MAY HAVE GREATER THAN ONE MEMBER MORE THAN ANY OTHER HOME RULE OR FIRST CLASS CITY.] Appointments shall be subject to confirmation by the assembly. The city seats are as follows:

1. Homer;
2. Kenai;
3. Seldovia;
4. Seward; and
5. Soldotna.

[B] C. At-Large Seats. Planning commissioners residing [FROM] outside of first class and home rule cities shall be appointed at-large by the mayor and confirmed by the assembly and may be as representative of the following geographic areas as practical:

1. East Peninsula;
2. Southwest Borough;
3. Anchor Point/Ninilchik[/CLAM GULTCH/KASILOF];
4. Clam Gulch/Kasilof;
- 5.[4.] Kalifornsky Beach;
- 6.[5.] Ridgeway;
- 7.[6.] Sterling;
- 8.[7.] Northwest Borough.

[THE GEOGRAPHIC AREAS REFERENCED IN THIS SECTION ARE DEPICTED IN THE MAP ON FILE AT THE BOROUGH CLERK'S OFFICE BEARING THE BOROUGH SEAL AND IDENTIFIED AS THE PLANNING APPORTIONMENT MAP APPROVED IN ORDINANCE 2001-29.]

[C] D. All planning commission members shall be appointed for their expertise and knowledge of the community and shall represent the entire borough.

SECTION 2. This ordinance becomes effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
OF * 2021.**

, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Reference Copy

Introduced by:	Mayor
Substitute Introduced:	08/23/16
O2016-25 (Johnson):	See Original for Prior History
Hearing:	08/23/16
Action:	Postponed to 09/20/16
Vote:	8 Yes, 0 No, 1 Absent
Date:	09/20/16
Action:	Failed to Enact
Vote:	4 Yes, 4 No, 1 Absent
Action:	Reconsideration Filed by Knopp
Date:	10/11/16
Action:	Reconsidered and Enacted as Amended
Vote:	7 Yes, 2 No, 0 Absent

KENAI PENINSULA BOROUGH ORDINANCE 2016-25 (MAYOR) SUBSTITUTE

AN ORDINANCE AMENDING KPB 2.40.010 TO REDUCE PLANNING COMMISSION MEMBERSHIP

WHEREAS, AS 29.40.020(a) requires that planning commission membership be apportioned so that the number of members from home rule and first class cities reflects the proportion of borough population residing in home rule and first class cities located in the borough; and

WHEREAS, all members are subject to appointment by the mayor and confirmation by the assembly, provided that members from home rule or first class cities must be selected by the mayor from a list of recommendations submitted by the city council; and

WHEREAS, KPB 2.40.010 currently provides that the planning commission shall include one member from each first class or home rule city of the borough, which is not required by statute, and that the number of remaining members from areas in the borough outside such cities must comply with the statutorily required apportionment; and

WHEREAS, based upon the 2010 US Census figures, the commission would have to be increased by either one or two members to satisfy the statutorily required apportionment figures if the planning commission continues to include one member from each first class or home rule city of the borough; and

WHEREAS, it is not in the best interest of the borough to further increase the number of members appointed to the planning commission; and

Reference Copy

WHEREAS, both the Kenai Peninsula Borough Assembly and School Board are composed of nine members; and

WHEREAS, limiting the total planning commission membership to eleven members, adopting the statutory apportionment requirement, and removing the requirement that every city have one representative but limiting each city to no more than one member would resolve the problem of an ever-expanding planning commission; and

WHEREAS, beginning the transition on August 1, 2020 would coincide with the expiration of some members' terms and the commencement of the next decennial census, improving the accuracy of information that would become available upon its completion to properly apportion city membership on the planning commission; and

WHEREAS, at its meeting of September 12, 2016 the planning commission did not recommend approval of the ordinance by majority consent;

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

SECTION 1. That KPB 2.40.010 is hereby amended as follows:

2.40.010. Membership—Apportionment.

In accordance with AS 29.40.020(a) through 11:59 p.m. July 31, 2020:

A. The planning commission shall consist of a maximum of thirteen members including one member from each first class or home rule city of the borough and the remainder apportioned so that the number of members from home rule and first class cities reflects the proportion of borough population residing in home rule and first class cities located in the borough. The first class or home rule cities of the borough are:

1. Kenai
2. Soldotna
3. Seward
4. Homer
5. Seldovia

B. Planning commissioners from outside of first class and home rule cities shall be appointed by the mayor and confirmed by the assembly from each of the following geographic areas as generally described below and depicted in the map on file at the borough clerk's office bearing the borough seal and identified as the planning commission apportionment map approved in Ordinance 2001-29. The sections described in the map

Reference Copy

and below provide guidelines from which deviations are permitted consistent with the intent that commissioners reside in areas throughout the borough:

- 1[6]. East Peninsula;
- 2[7]. Southwest Borough;
- 3[8]. Anchor Point/Ninilchik;
- 4[9]. Kasilof/Clam Gulch;
- 5[10]. Kalifornsky Beach
- 6[11]. Ridgeway;
- 7[12]. Sterling;
- 8[13]. Northwest Borough.

SECTION 2. That KPB 2.40.010 is repealed effective August 1, 2020.

SECTION 3. That KPB 2.40.015 is hereby enacted to read as follows:

2.40.015. Membership—Apportionment.

In accordance with AS 29.40.020(a):

- A. The planning commission shall consist of a maximum of eleven members. Commission membership shall be apportioned so that the number of members from home rule and first class cities reflects the proportion of borough population residing in home rule and first class cities located in the borough. No more than one member of the commission may be from any single home rule or first class city in the borough unless more are required to satisfy the statutory apportionment requirement. A city member shall be selected by the mayor from a list of recommendations submitted by the council of any cities from which no member will be on the commission when the vacancy is effective, unless apportionment requires more than one member from a city. In that event all eligible city councils may submit a list of recommendations for the additional seat provided that no city may have greater than one member more than any other home rule or first class city. Appointments shall be subject to confirmation by the assembly.
- B. Planning commissioners from outside of first class and home rule cities shall be appointed at-large by the mayor and confirmed by the assembly and may be as representative of the following geographic areas as practical:

Reference Copy

1. East Peninsula;
2. Southwest Borough;
3. Anchor Point/Ninilchik/Clam Gulch/Kasilof;
4. Kalifornsky Beach
5. Ridgeway;
6. Sterling;
7. Northwest Borough.

The geographic areas referenced in this section are depicted in the map on file at the borough clerk's office bearing the borough seal and identified as the planning commission apportionment map approved in Ordinance 2001-29.


- C. All planning commission members shall be appointed for their expertise and knowledge of the community and shall represent the entire borough.

SECTION 4. Transition. Existing seats of planning commission members from each area within the new Anchor Point/Ninilchik/Clam Gulch/Kasilof area whose term expires first on or after July 31, 2020 shall not be filled unless necessary to comply with apportionment requirements and provided the total number of commissioners does not exceed eleven. Nothing in this ordinance prohibits a planning commissioner from an at-large geographic area from applying for any open at-large planning commission seat.


Existing seats of city members whose terms expire first on or after July 31, 2020 shall only be filled if, by doing so the number of city members would meet the statutory apportionment requirements and the total number of commissioners would not exceed eleven.

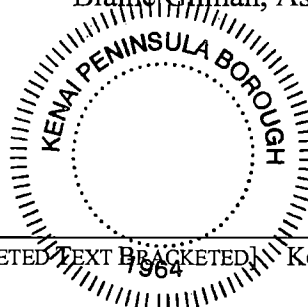
SECTION 5. That Sections 1 and 4 of this ordinance take effect immediately upon its enactment, and Sections 2 and 3 of this ordinance shall take effect August 1, 2020.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 11TH DAY OF OCTOBER, 2016.


Blaine Gilman, Assembly President

ATTEST:


John Blankenship, MMC, Borough Clerk



Reference Copy

08/23/16 Vote on motion to postpone to 09/20/16:

Yes: Bagley, Cooper, Dunne, Holmdahl, Johnson, Knopp, Ogle, Gilman

No: None

Absent: Welles

09/20/16 Vote on motion to enact:

Yes: Johnson, Knopp, Ogle, Gilman

No: Bagley, Cooper, Dunne, Holmdahl

Absent: Welles

10/11/16 Vote on motion to reconsider:

Yes: Bagley, Cooper, Holmdahl, Johnson, Knopp, Ogle, Gilman

No: Dunne, Welles

Absent: None

10/11/16 Vote on motion to enact as amended:

Yes: Bagley, Cooper, Holmdahl, Johnson, Knopp, Ogle, Gilman

No: Dunne, Welles

Absent: None



P.O. Drawer B Seldovia, Alaska 99663 Phone: (907) 234-7643, Fax: (907) 234-7430 email: citymanager@cityofseldovia.com

October 22, 2021

Mayor Pierce and Kenai Peninsula Borough Assembly
Electronically submitted: assemblyclerk@kpb.us

Subject: Letter of Support for KPB Ordinance 2021-40

Mayor Pierce and Kenai Peninsula Borough Assembly,

On behalf of the City of Seldovia, I am writing in support of Kenai Peninsula Borough (KPB) Ordinance 2021-40.

At their July 26, 2021 meeting, Mayor Campbell and Seldovia City Council discussed the composition of the Kenai Peninsula Borough Planning Commission. While no formal action was taken at the meeting, the Council's preference was for Seldovia to retain a seat on the Kenai Peninsula Borough Planning Commission and the council spoke in support of requesting the KPB consider reinstating 13 seats on the Commission to ensure each first class and home rule city (5 total) has a guaranteed seat and that the Borough Mayor recognizes the city's recommended appointment to the Commission.

Ordinance 2021-40 seeks to increase the KPB Planning Commission seats from 11 to 13. The ordinance also guarantees Seldovia a seat on the Commission. Additionally, the ordinance maintains the City's ability to nominate one or more applicants for consideration to Seldovia's designated seat, and that the applicant must be a resident of Seldovia in order to serve.

Given discussion regarding this ordinance is occurring the day after the Seldovia City Council meeting (October 25th), I can offer additional feedback I receive from the council at the ordinance's hearing.

Thank you for your consideration,

Rachel Friedlander
City Manager

Introduced by: City Manager
 Date: 11/8/21
 Action: Approved
 Vote: 6 Yes, 0 No

**CITY OF SELDOVIA
 RESOLUTION 22-18**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SELDOVIA, ALASKA
 SUPPORTING THE KENAI PENINSULA BOROUGH ORDINANCE 2021-40
 REGARDING PLANNING COMMISSION MEMBERSHIP AND APPORTIONMENT.**

WHEREAS, At the July 26, 2021 regular meeting, Seldovia City Council discussed the composition of the Kenai Peninsula Borough (KPB) Planning Commission; and

WHEREAS, While there was no formal action taken at the meeting, the Council expressed that its preference was for Seldovia to retain a seat on the KPB Planning Commission and spoke in support of requesting that the Borough consider reinstating thirteen seats on the Commission to ensure each first class and home rule city has a guaranteed seat and that the Borough Mayor recognizes the city's recommended appointment to the Commission; and

WHEREAS, KPB Ordinance 2021-40 seeks to increase the KPB Planning Commission seats from 11 to 13. The ordinance maintains the City's ability to nominate one or more applicants for consideration to Seldovia's designated seat, and that the applicant must be a resident of Seldovia in order to serve; and

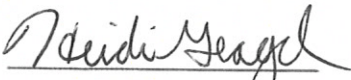
WHEREAS, It is in the best interest of the City of Seldovia to support KPB Ordinance 2021-40.

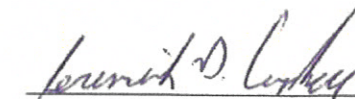
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELDOVIA that the Seldovia City Council unanimously supports KPB Ordinance 2021-40.

PASSED AND APPROVED by a duly constituted quorum of the City Council of Seldovia, Alaska, on this 8th day of November, 2021.

ATTEST:

APPROVED:


 Heidi Geagel, City Clerk


 Jeremiah Campbell, Mayor





MEMORANDUM

TO: Mayor Gabriel and Council Members

FROM: Council Member Jim Glendening

DATE: October 25, 2021

SUBJECT: **Resolution 2021-65 – Supporting Kenai Peninsula Borough Ordinance 2021-40, Amending KPB 2.40.015 Regarding Planning Commission Membership and Apportionment**

The Kenai Peninsula Borough Assembly will be considering Ordinance 2021-40, Amending KPB 2.40.015 regarding Planning Commission Membership and Apportionment at its December 7, 2021 meeting. This Ordinance re-establishes city seats, including the City of Kenai, on the Borough Planning Commission, which were reduced by Kenai Peninsula Borough Ordinance 2016-25 Substitute.

Since the enactment of Ordinance 2016-25, which was opposed by the City of Kenai at introduction, the five home rule and first class cities of the Borough, including Homer, Kenai, Soldotna, Seward, and Seldovia have shared four city seats by rotation. Kenai Peninsula Borough Code does not provide clarity as to how these seats would be distributed; however, the current policy of rotation means that at all times, one of these cities will not have representation on the Borough's Planning Commission for matters of importance to that city.

As the city with the largest population in the Borough, it is important that the City of Kenai has representation on the Borough's Planning Commission and not be required to share a rotating seat. Re-establishing the city seat lost by the enactment of Ordinance 2016-25 Substitute by re-establishing these seats and clarifying that the commissioner serving on a city seat must be a city resident, and a list have at least one name is in the best interests of residents of Kenai as well as the greater Kenai community.

Your consideration is appreciated.



Sponsored by: Council Member Jim Glendening

CITY OF KENAI

RESOLUTION NO. 2021-65

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, SUPPORTING KENAI PENINSULA BOROUGH ORDINANCE 2021-40, AN ORDINANCE AMENDING KPB 2.40.015 REGARDING PLANNING COMMISSION MEMBERSHIP AND APPORTIONMENT.

WHEREAS, Resolution 2016-31 opposed Kenai Peninsula Borough Ordinance 2016-25 as introduced, which proposed to reduce Borough Planning Commission membership from 13 to 9 and eliminate the designated seat for the City of Kenai; and,

WHEREAS, Kenai Peninsula Borough Ordinance 2016-25 Substitute amended Borough Code 2.40.010 to reduce the Borough's Planning Commission membership from 13 members, including one member from each of the five first class or home rule cities of the Borough, to 11 members, without providing a process for how the five cities would share the four remaining city seats; and,

WHEREAS Kenai Peninsula Borough Code 2.40.010 does not identify specific city seats, how they would equitably rotate each year and term, or require that the 5 city seats be filled by a resident of the respective cities; and,

WHEREAS, Kenai Peninsula Borough Ordinance 2021-40, which has been introduced and is scheduled to be heard on December 7, 2021, would re-establish the number of Borough planning commissioners at 13; and,

WHEREAS, the Ordinance would also establish a designated seat for the cities of Homer, Kenai, Soldotna, Seward, and Seldovia and require that the individual appointed to that seat be a resident of the respective city; and,

WHEREAS, current Borough policy requires that each Council provide a list of recommendations with more than one applicant, limiting the ability of the respective Council to comply with the policy in instances where only one applicant applies for a city seat; and,

WHEREAS, that same policy does not require that an individual that is appointed to a City seat be a resident of the respective City; and,

WHEREAS, the City of Kenai has the largest population of any city in the Borough, with a population of 7,424, or approximately 12% of the Kenai Peninsula Borough, according to the 2020 Census data; and,

WHEREAS, membership on the Borough's Planning Commission allows the City to provide input and weigh in on important development and economic activities that affect the City; and,

WHEREAS, specific representation on the Borough's Planning Commission for municipalities and population centers is critical as evidenced by the Alaska Statute 29.40.020 which sets out a specific apportionment for home rule and first class cities located in the borough; and,

WHEREAS, it is in the best interests of the residents of the City of Kenai to be served by representation on the Borough's Planning Commission as well as the residents of our neighboring home rule and first class cities within the Borough by re-establishing the number of Borough planning commissioners to 13 and reinstituting City seats.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA:

Section 1. The Council supports Kenai Peninsula Borough Ordinance 2021-40 as introduced and recommends the Kenai Peninsula Borough Assembly reestablish designated seats for the cities of Homer, Kenai, Soldotna, Seward, and Seldovia, and clarify that a Kenai Peninsula Borough planning commissioner representing a city must be a resident of that city, and a list have at least one name.

Section 2. That a copy of this Resolution be forwarded to the Kenai Peninsula Borough Assembly, Mayor Pierce and the Kenai Peninsula Borough Planning Commission.

Section 3. That this resolution takes effect immediately upon passage.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 3rd day of November, 2021.

ATTEST:


Jamie Heinz, MMC, City Clerk


BRIAN GABRIEL, SR., MAYOR



CITY OF SOLDOTNA
RESOLUTION 2021-055

A RESOLUTION IN SUPPORT OF PROPOSED KENAI PENINSULA BOROUGH ORDINANCE
2021-40: AN ORDINANCE AMENDING KPB 2.40.015 REGARDING PLANNING
COMMISSION MEMBERSHIP AND APPORTIONMENT

WHEREAS, Resolution 2016-028 adopted by the Soldotna City Council on July 13, 2016 opposed Kenai Peninsula Borough (KPB) Ordinance 2016-25 in its original form which proposed the KPB Planning Commission be reduced from thirteen members to nine members, with one member being from either the City of Soldotna or City of Kenai; and

WHEREAS, the KPB Assembly amended Ordinance 2016-025 by substitute reducing the membership from thirteen to eleven members, the substitute ordinance as enacted provided no provisions for how the five cities would share the four seats designated for city representation; and

WHEREAS, KPB Ordinance 2021-40 proposes to increase the KPB Planning Commission membership from eleven back to thirteen, with each of the five first class or home rule cities within the KPB again having a designated seat on the KPB Planning Commission; and

WHEREAS, it is in the best interest of the cities and the borough that all cities have a fixed seat on the KPB Planning Commission to ensure that a diversity of perspectives are offered and that cities have a voice on local and regional land use decisions and policy recommendations; and

WHEREAS, the Borough Administration has historically held that candidates for a 'city' designated seat on the Borough Planning Commission must be a qualified voter of the borough "who reside within the city limits," and this qualification was reiterated as recently as May 5, 2021 in a letter from Mayor Pierce to Mayor Whitney, announcing the current vacancy on the Borough Planning Commission; and

WHEREAS, this residency interpretation has been consistently applied by the Borough in the past, even causing sitting planning commissioners to have to step down from their seat if they moved their residence during their tenure on the Borough Planning Commission; and

WHEREAS, the Borough's recent advertisement for a vacant city designated seat provided that 'Any borough resident may apply,' a reversal of the borough's own longstanding practice and in conflict with State Statutes which require membership to be apportioned based on population inside versus outside incorporated cities; and

WHEREAS, past and current Borough Mayors have given great deference to the City Councils of the incorporated cities, as the elected representatives designated under Alaska Statutes responsible for forwarding a recommendation for the Borough Planning Commission member to represent their city; and

WHEREAS, the various City Councils often forward a single name for consideration, and Mayor Pierce recently accepted and recommended Assembly confirmation when only one recommended candidate was forwarded from the City of Seldovia in 2018, the Cities of Kenai and Homer in 2019, and the City of Seward in 2020; and

WHEREAS, KPB Ordinance 2021-40 codifies in Borough code the long-standing processes for filling vacancies of City representatives on the Borough Planning Commission, and returns the commission to 13 members as it existed prior to 2016; and

WHEREAS, the City of Soldotna has not had a representative on the Borough Planning Commission since July 31, 2020; and

WHEREAS, it is in the best interest of the residents of the City of Soldotna that the Assembly adopt Ordinance 2021-40, reestablishing designated city seats on the Borough Planning Commission and codifying procedures that ensure the residents of home rule and first class cities within the Borough are represented in borough planning decisions and processes;

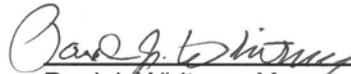
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOLDOTNA, ALASKA:

Section 1. That the Soldotna City Council supports KPB Ordinance 2021-40 as introduced, and recommends the Kenai Peninsula Borough Assembly reestablish designated seats for the cities of Homer, Kenai, Seldovia, Seward, and Soldotna, and clarifying that a planning commissioner serving on a city seat must be a city resident, and that City Councils may forward a single recommended candidate for consideration.


Section 2. That a copy of this Resolution shall be forwarded to the Borough Clerk's Office, the Borough Planning Commission, the Kenai Peninsula Borough Assembly, and the office of Mayor Charlie Pierce.

Section 3. This resolution shall become effective immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL THIS 10TH DAY OF NOVEMBER, 2021.


Paul J. Whitney, Mayor

ATTEST:


Michelle M. Saner, MMC, City Clerk

Yes: Hutchings, Ruffridge, Nelson, Carey, Chilson, Parker
No: None

1

Directors Report

Planning Commission Amendments

12/2/6/1/11

2

2.40.015. - Membership—Apportionment.

A. The planning commission shall consist of a maximum of **eleven members**. Commission membership shall be apportioned so that the number of members from home rule and first class cities reflects the proportion of borough population residing in home rule and first class cities located in the borough. No more than one member of the commission may be from any single home rule or first class city in the borough unless more are required to satisfy the statutory apportionment requirement. A city member shall be selected by the mayor from a list of recommendations submitted by the council of any cities from which no member will be on the commission when the vacancy is effective, unless apportionment requires more than one member from a city. In that event all eligible city councils may submit a list of recommendations for the additional seat provided that no city may have greater than one member more than any other home rule or first class city. Appointments shall be subject to confirmation by the assembly.

B. Planning commissioners from outside of first class and home rule cities shall be appointed at-large by the mayor and confirmed by the assembly and may be as representative of the following geographic areas as practical:

- 1) East Peninsula;
- 2) Southwest Borough;
- 3) Anchor Point/Niniichik/Clam Gulch/Kasilof;
- 4) Kalifornsky Beach
- 5) Ridgeway;
- 6) Sterling;
- 7) Northwest Borough.

11/19/2021

3

Amend Item # 1 KPB Code 2.40.015

- How Many City Seats Should be on the Planning Commission?

- The proposed amendment points out:

KPB currently has an eleven-member planning commission. There are four city seats, which are subject to an informal rotation between five home rule/first class cities and seven at-large seats. This aligns with apportionment rules, but is difficult, if not, impossible to accomplish with five cities rotating four, 3-year term seats. It is mathematically impossible to create an equitable rotation. This is most likely why Ordinance 2016-25 did not specify how city seats would be distributed.

- Proposed amendment is to go back to 13**

12/2/6/11

4

Points of Consideration for 13 Seats

- Stops issues with any rotation of city seats
- Alternative views from the Cities vs. citizens serving in the seats/ Is it a city government seat or a resident seat?
- Will this create permanent ZOOM Seats?
- Costs to KPB taxpayers?
- Where do we put the additional seats and will this allow for a remodel to accommodate the meeting space/needs?
- Is it an administrative function to allow for a rotation of commissioners utilizing a Zoom meeting format (no remodel necessary)?
- Support for a budget increase to cover additional seats?

11/19/2021

5

2019/2020/2021

Planning Commission Original Budgets

2019 \$90,685
 2020 \$86,000
 2021 \$76,400

These costs include: meeting allowance,
 transport/subsistence,
 car allowance, &
 training

12/2/6/11

6

2019 Cost for Distance Seats

City of Seldovia	City of Seward	City of Homer	Cooper Landing
\$ 10,329.50	\$ 6,706.25	\$ 6,212.30	\$ 5,310.00
(Flights, Mileage, Hotel, Meals, iPad, Meeting Pay)			

12/2/6/11

7

State Statute 29.40.020

- (a) Each first and second class borough shall establish a planning commission consisting of five residents unless a greater number is required by ordinance. Commission **membership shall be apportioned** so that the number of members from home rule and first class cities reflects the proportion of borough population residing in home rule and first class cities located in the borough. A member shall be appointed by the borough mayor for a term of three years subject to confirmation by the assembly, except that a member from a home rule or first class city shall be selected from a list of recommendations submitted by the council. Members first appointed shall draw lots for one, two, and three year terms. Appointments to fill vacancies are for the unexpired term. The compensation and expenses of the planning commission and its staff are paid as directed by the assembly.

12/2/6/11

8

What Does a Thirteen Member Planning Commission look like

City/Borough	Population	Rural Seats	Population
City Seat Kenai	7424	Northwest Borough Nikiski/Gray Cliff/Moose Point/Tyonek/Beluga	4,456/228/ 152/34
City Seat Soldotna	4342	Sterling	5918
City Seat Seward	2717	Ridgeway	2136
City Seat Homer	5522	Kalifornsky Beach	8487
City Seat Seldovia	255	East Peninsula	344/161/228
		Kasilof/Clam Gulch/Anchor Point/Ninilchik	525/207/ 2105/845
		SW Borough Kachemak/Port Graham/Nanwalek/Fox River/Voznesenka and Halibut Cove/Diamond	162/247/576/ 644/60/1,330
Apportionment =	5/7 + 1?	Youth Seat? non-specified at large seat?	

11/19/2021

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What Does a Five Member Planning Commission look like

City/Borough	Population (2020 Census)
Kenai	7424
Soldotna	4342
Seward	2717
Homer	5522
Seldovia	235
Total City	20,240 City Population
KPB Rural	38,559 Rural Population

Apportionment could be 5 Districts or 2 City Seats, 3 Rural

11/19/2021

10

Amend Item # 2 KPB Code 2.40.015

Should cities be required to submit more than one applicant to the KPB Mayor for selection to the planning commission?

State Statute 29.40.020:

(a) Each first and second class borough shall establish a planning commission consisting of **five residents** unless a greater number is required by ordinance. Commission **membership shall be apportioned** so that the number of members from home rule and first class cities reflects the proportion of borough population residing in home rule and first class cities located in the borough. **A member shall be appointed by the borough mayor** for a term of three years subject to confirmation by the assembly, except **that a member from a home rule or first class city shall be selected from a list of recommendations submitted by the council**. Members first appointed shall draw lots for one, two, and three year terms. Appointments to fill vacancies are for the unexpired term. The compensation and expenses of the planning commission and its staff are paid as directed by the assembly.

11/19/2021

11

Amend Item # 3 KPB Code 2.40.015

Should any eligible resident of the borough be allowed to apply for planning commission city seat or should the applicant be required to be a resident of that city?

- Recently the KPB Mayor and legal department made it clear that they believe state law allows for any eligible KPB resident to apply for a planning commission city seat. The city representatives and constituents that we have spoken with do not feel the same. Many of them disagree with this interpretation of the law. This ordinance would specify that an applicant for a city seat on the planning commission would be required to be a resident of the respective city. Defining who can be seated in a city seat on the planning commission would eliminate any argument that the apportionment to the unincorporated borough could be too high to comply with State of Alaska requirements. If city seats were to be filled with residents from outside the cities, the cities would be inequitably served on the commission.

11/19/2021

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Borough	Class	2020 Population	Square Miles	Incorporated Cities?	PC Seats by Borough	Additional Information/ How the PC is composed
City & Borough of Sitka	Unified Home Rule	8,458	2,882	1	5	5 members; roster states "from public"
City & Borough of Yakutat	Home Rule	662	7,650	1	5	5 non-specified
City and Borough of Wrangell	Unified Home Rule	2,127	2,570	1	5	5 non-specified seats
Denali Borough	Home Rule	1,619	12,750	2	5	5 Districts with 9 seats; 1 districts has 4 seats, 1 districts has 2 seats the rest are 1 seat
Municipality of Skagway	First Class	464	464	1	6	6 undefined seats
Petersburg Borough	Home Rule	3,398	119.2	1	6	6 undefined seats
Aleutians East Borough	2nd Class Borough	3,420	6,985	5	7	Seats are by area: False Pass, Sand Point (2), King Cove (2), Nelson Lagoon, Akutan
Anchorage Borough	Unified Home Rule	291,247	1,698	1	7	defined by seat 1,2,3 etc
Bristol Bay Borough	2nd Class Borough	844	519	0	7	7 non-specified seats
Haines Borough	Home Rule	2,080	2,357	1	7	7 Seats A-G
Ketchikan Gateway Borough	2nd Class Borough	13,948	1,220	2	7	4 city and 3 at large seats
Kodiak Island Borough	2nd Class Borough	13,101	6,463	1	7	4 at large and 3 city seats
Lake And Peninsula Borough	Home Rule	1,476	23,632	1	7	7 undefined seats
Matanuska-Susitna Borough	2nd Class Borough	107,081	24,694	3	7	7 seats-by district
North Slope Borough	Home Rule	11,031	87,860	7	8	8 non specified
City & Borough of Juneau	Unified Home Rule		2,594	1	9	9 non-specified seats
Northwest Arctic Borough	Home Rule	7,793	35,862	8	9	9 seats-undefined but 2 are specifically not voting seats advisory only
Fairbanks North Star Borough	2nd Class Borough	95,655	7,362	2	11	11 Seats A-K ; 3 seats for city of Fairbanks, 1 city seat for North Pole rest are at large
Kenai Peninsula Borough	2nd Class Borough	58,799	16,079	6	11	4 City Seats and 7 at large the city seats are on a rotation

11/19/2021

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11/19/2021

<u>Date of Meeting</u>	<u>Number of seats (per meeting minutes)</u>	<u>Census counts are done on the decade</u>	<u>Number of residents represented by 1 seat</u>
July 29, 1967	9	9053	1006
March 4, 1968	9	9053	1006
April 15, 1968	9	9053	1006
December 16, 1968	9	9053	1006
November 17, 1969	9	9053	1006
December 7, 1970	9	16586	1843
November 22, 1971	9	16586	1843
November 27, 1972	8	16586	2073
December 10, 1973	9	16586	1843
December 9, 1974	10	16586	1659
December 8, 1975	6	16586	2764
December 20, 1976	10	16586	1659
December 19, 1977	10	16586	1659
December 11, 1978	10	16586	1659
December 3, 1979	10	16586	1659
December 1, 1980	10	25282	2528
December 14, 1981	8	25282	3160
December 11, 1982	9	25282	2809
December 11, 1983	10	25282	2528
December 17, 1984	12	25282	2107
December 16, 1985	10	25282	2528
December 17, 1986	11	25282	2298
December 14, 1987	10	25282	2528
December 19, 1988	11	25282	2298
December 18, 1989	8	25282	3160
December 17, 1990	11	40486	3681
December 16, 1991	9	40486	4498
December 14, 1992	11	40486	3681
December 13, 1993	11	40486	3681
December 2, 1994	11	40486	3681
December 11, 1995	11	40486	3681
December 16, 1996	11	40486	3681
December 15, 1997	11	40486	3681
December 14, 1998	11	40486	3681
December 13, 1999	11	40486	3681
December 11, 2000	11	49691	4517
December 10, 2001	11	50005	4546
* December 9, 2002	13	50621	3894
December 8, 2003	13	51398	3954

December 13, 2004	13	51350	3950
December 12, 2005	13	51350	3950
December 11, 2006	13	51350	3950
December 10, 2007	13	51350	3950
December 15, 2008	13	51350	3950
December 14, 2009	13	51350	3950
December 13, 2010	13	55400	4262
December 12, 2011	13	55400	4262
December 10, 2012	13	55400	4262
December 16, 2013	13	55400	4262
December 15, 2014	13	55400	4262
December 14, 2015	13	55400	4262
December 12, 2016	13	55400	4262
December 11, 2017	13	55400	4262
December 10, 2018	13	55400	4262
December 16, 2019	13	58367	4490
December 14, 2020	13	58367	4490
October 11, 2021	11	58367	5306

The data included on this chart is taken from the Planning Commission meeting minutes contained on the Kenai Peninsula Borough's Planning webpage (<https://www.kpb.us/planning-dept/planning-commission>) and the population data is taken from http://www2.borough.kenai.ak.us/Econ/1S_P%20data/Demographics/PopulationOverview.htm and drawn from the U.S. Census Bureau website <https://data.census.gov>.

*The number of seats isn't exact until it began to be explicitly noted as a line item in the minutes starting in 2002 (i.e. "With 12 members of a 13 member Commission in attendance, a quorum was present. The City of Homer seat is vacant at this time").



Office of the Borough Mayor

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2150 • (907) 714-2377 Fax

Charlie Pierce
Borough Mayor

Dear Mayor's and City Managers:

November 19, 2021

This issue regarding the borough's planning commission has taken on a life of its own. The borough and the cities should be partners. Our goals and interests are shared. Squabbles over the borough's planning commission are not in anyone's best interest. Toward that end I want to provide some context and perspective for the decisions related to the borough's planning commission.

Membership/Apportionment of Seats

When our staff started looking at the issue of membership and apportionment on the borough's planning commission the objective was to work with the ordinances on the books to figure out a way for five home rule or first-class cities to share four allotted city seats. Under the rotation idea, every other year, two cities would face expiring terms and the borough mayor would then have to pick the city that stays on for another three-year term and the city that rotates off. It was apparent that the rotation of city seats was not a viable long-term solution.

The next logical solution working within current code was to discuss with Homer and Seldovia the idea of sharing a seat, with Homer looking out for and always considering the interests of the residents and city of Seldovia. The solution seemed to encourage comity, intergovernmental sharing of powers or services, and efficient cost-effective government. Both cities made it clear, however, that they were not interested in that solution. In the process I learned that the cities are very protective of borough planning commission seats. Frankly, I still am trying to learn exactly why that is because my understanding is that the cities control all zoning and development within the cities. When our planning commission wrestles with controversial issues, it typically concerns local option zones or material site permit issues in the areas outside of the cities. Nonetheless, and despite Ordinance 2016-25 reducing the allotted city seats from five to four, it is apparent that every home rule or first-class city in the borough expects to have a seat on the borough's planning commission.

Ordinance 2021-40: Moving to a 13-member commission

Alaska statute requires proportional apportionment of seats based on population. Based on current population figures the borough's total population is 58,799. The aggregate population residing in the cities is 20,240 and the population outside the cities is 38,559.

Based on population figures, we have determined that the required allocation rounds to about 1/3 of the seats being city seats and 2/3 of the seats being at large seats. State law requires at least a 5-member commission. For example, if the commission was a 5-member commission, the allocation would round to: two city seats and three at large seats. If it is a 9-member commission, the allocation would be: three city seats, six at large seats. As such, stating that state law mandates that all first-class cities or home rule cities have a seat on the borough's planning commission is not an accurate representation of state law. The current ordinance on the books does not allot each city its own seat and that ordinance has not been challenged.

List of Recommendations

There has been an excessive amount of back and forth over what constitutes a “list of recommendations”. State law purposefully set up a system of checks and balances and purposefully used the phrase “list of recommendations” in the plural. Under state law, the respective city council submits an approved list of recommendations, the mayor makes an appointment decision from the list of recommendations, and then the appointment is subject to assembly confirmation. In recent history an appointment was submitted to the assembly for confirmation and that appointment was not confirmed by the assembly. That is the power vested in the assembly by state law.

The power vested in the borough mayor under state law is the executive appointment power. By sending only one name the cities are failing to respect the borough mayor’s appointment discretion. We could argue about that back and forth but the fact remains that the borough mayor is vested executive appointment powers. I am respectfully asking that you respect the office of the mayor and provide me with choice: a list of recommendations, plural.

The Notice and Application process should be handled by the Borough

As I have stated all along, I have no intention of subverting the city’s process in providing a list of recommendations for appointment. The purpose of the borough handling the notice and application process is that the borough’s planning commission is a borough function. The borough handles the notices and applications for all the borough’s boards and commissions. This ensures (1) a consistent and uniform approach to the process for filling a vacancy on the borough’s planning commission; and (2) that the borough has the records it needs to preserve and be able to publicly disclose for public record act purposes. You have to admit it is bizarre that the KPB would handle the application process for all other borough boards and commissions, including all the planning commission’s at large seats, but not the city seats.

ALL applications that are received for a city seat will be sent to the respective city. The city will vet the applicants and then send back a list of recommendations as approved by the council. The borough will not pre-vet any applications. The cities handle such process for all city boards and commissions; it is common sense that the borough should do the same.

The borough handling the process for the borough’s planning commission will ensure consistency, transparency, and should expand opportunities for all qualified residents of the borough to engage in public serve. The community is better served when public service is open and accessible to all who are interested. I hope the added benefit from centralizing the application process moving forward is that all residents will know exactly how, when, and where to apply. Putting forward only elected or appointed officials in city government creates a closed club and thus disenfranchises other borough residents from public service. My sincere hope is that you can open your consideration to candidates beyond current council members, city mayors, or city planning and zoning commissioners. Pyramids of power are not good for the public’s confidence in its systems of government. We need to open up public service and look beyond our inner circles because additional skilled, dutiful volunteers to serve.



Charlie Pierce
Mayor



Planning Director's Report

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2215 • (907) 714-2378 Fax

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

Melanie Aeschliman, Planning Director • Charlie Pierce, Borough Mayor

Planning Department Directors Report November 29, 2021 PC Meeting

Planning:

Attached you will find the gravel pit ordinance, the Mayor/Assembly members will be bringing this back to the Assembly in December. I wanted you to have a chance to review the documentation and timeline. Would the PC like to have another review of this document or are you comfortable with this as it was previously reviewed and approved by this body?

Code Compliance:

New Imagery - With the advent of KPB purchase of ConnectExplorer EagleView Pictometry, Assessing, Planning and Roads Department staff have identified KPB properties that are in trespass or encroached on by neighboring property owners.

- There has been 11 trespass and encroachments identified from May 2021 to present.
- Several land surveys of six trespasses/encroachments cases have been sought by bid process. Many of these cases are being handed over to the KPB legal Dept. for legal action.
- Coordination with Roads Service Area Dept. regarding a Homer building encroachment in the ROW has been resolved. There are 3 cases of a similar nature still under investigation.

Code Compliance has been assisting with gravel pit management by participating with fall season site inspections.

Code Compliance has assisted River Center staff with site visits for violations of HPD and other habitat issues.

- A joint effort resulted in the removal of ELP being removed from a KPB parcel.

There has been two cases of trespass on KPB property by "squatters" In both case the trespassers were motivated to move along with the assistance of the Alaska State Troopers.

Initial investigation of the Soil burning site was routed through Code Compliance, but is now being governed by the State of Alaska.

Problem areas and complaints from the general public about "junk" or "derelict" properties continue to be received.

River Center Updates:

1. We are preparing to send out a newsletter to approximately 3,100 properties along the borough's regulated anadromous waterbodies. This will be an annual mail out moving forward, but will also encourage folks to sign up for electronic newsletters in the future.
2. We received an EPA sub-award grant from the Kenai Watershed Forum (KWF) so we can further support the Adopt a Stream Program, and are working with KWF staff to develop field trip materials for K-12 students.
3. River Center staff continue to work with the Kachemak Bay Conservation Society to develop an online outreach platform, which is slated to be live this spring.
4. River Center staff and KWF are hosting an interactive presentation for the community. Folks will have the opportunity to try out KWF's new EM2 River Table, and learn how they can become good stewards of the river. This will be held at the River Center on December 14th from 5:30-6:30pm. See attached flyer.

HOW DOES A WATERSHED WORK?

AN INTERACTIVE PRESENTATION
WITH KENAI RIVER CENTER AND
KENAI WATERSHED FORUM


Tuesday, December 14, 5:30-6:30PM
@ the Donald E Gilman River Center

**ARE YOU A LANDOWNER ON
THE KENAI PENINSULA?**

Come learn about how the
River Center can help you be a
good steward of the river and
try out the new river table!



EM2 River Table

Land Management:**Spruce Bark Beetle- Mass Timber Sale Project**

Our Land Management team is working on developing a Mass Timber Sale Project with the objectives of (1) Addressing the Spruce Bark Beetle (SBB) forest health epidemic on KPB owned and managed lands, (2) Utilizing affected timber, and (3) Mitigating hazardous wildland fuels on our landscape. We are currently drafting the Project scope and have identified a focus area of approximately 23,000 acres of KPB owned and managed forested land that is within the heavily infested zone between Cooper Landing, Point Possession, and Kasilof. Our next steps will be defining our forest management guidelines and methodology for treatment.

This project supports growth of the timber industry on the Kenai Peninsula, supplying fuelwood to the public and lumber to the construction and development market, alongside growth of forestry businesses. This in turn validates our goals of offering long-term timber volume to create legacy infrastructure and a local labor force that will enable KPB to effectively manage borough-forested lands long-term. These efforts will also address our need for a comprehensive Forest Management Plan that allows for the strategic, sustainable management of borough forested lands. Adjacent landowners are presently working on this collective cross-boundary forest management effort; thus, this project aligns with the goals of KPB's CWPP, ALAH, AK DOF, AK DF&G, USFS Chugach NF, and private landowners. Timing is a key element here, as timber quality diminishes, cost per acre for treatment increases, as well as catastrophic risk from Wildland fire.

Our team recognizes the complexity and magnitude of this task and is working on defining and focusing our path, protocols, and processes; knowing that each step will inform the next. Immediate action is needed and as we draft our project scope LMD looks to the Planning Commission to gather your input to collectively shape our methods. We look forward to presenting the PC with a preliminary action plan which will then guide our community outreach and stakeholder coordination.

MEMORANDUM

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

THRU: Charlie Pierce, Mayor

FROM: Melanie Aeschliman, Planning Director

DATE: November 23, 2021

SUBJECT: Ordinance 2021-___ Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures (Mayor)

On December 13, 2019, the assembly failed to enact Ordinance 2019-30(SUB). As requested, this proposed ordinance reintroduces, word for word, O2019-30(SUB). Any amendments to this proposed ordinance will be proposed as separate amendment memorandums.

A timeline regarding the material site work group recommendations, planning commission recommendations, and the history of O2019-30(SUB) is attached.

Your consideration of these amendments is appreciated.

MEMORANDUM

TO: Blair Martin, Planning Commission Chair
Members, Kenai Peninsula Borough Planning Commission

THRU: Melanie Aeschliman, Planning Director *MA*
Samantha Lopez, River Center Manager *SL*

FROM: Bryan Taylor, Planner *BT*

DATE: November 17, 2021

RE: Reintroduction of Ordinance 2019-30 SUB; An Ordinance Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures

The mayor would like to reintroduce the above ordinance at the December 7, 2021, Assembly meeting. The Planning Commission reviewed the original ordinance at its regularly scheduled November 12, 2019 meeting. Prior to that, the Planning Commission reviewed an ordinance proposed by the Material Site Work Group and recommended amendments. Ordinance 2019-30 Substitute incorporates all changes recommended by the Planning Commission. Below is a timeline of the ordinance's development and legislative history.

- **January 16, 2018:** KPB Assembly established a Material Site Work Group (MSWG) through Resolution 2018-004 Substitute.
- **January 31, 2018 through April 30, 2019:** The MSWG held work session meetings and took public comment. (Meetings were not held between May 23 and October 10, 2018, to avoid overlapping with the construction season when operators would not be available to participate.) At its second meeting on February 14, 2018, the MSWG adopted the following mission statement: *"To evaluate our existing KPB codes with respect to material sites (gravel extraction) to ensure that we collectively believe the appropriate balance exists to meet the need for affordable development while also protecting quality of life for our residents."*
- **May 15, 2018:** Through Resolution 2018-25, the Assembly extended the deadline for the MSWG to produce a report until April 30, 2019.
- **April 30, 2019:** At its final meeting, the MSWG forwarded a proposed ordinance to the Planning Commission for review.
- **May 13, 2019:** The Planning Commission held a regular meeting and the MSWG's proposed ordinance was placed on the Planning Commission's agenda under "Pending Items for Future Action". There was some commission discussion of the item. The minutes noted that the commission would consider it at its June 24, 2019, meeting when

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Date: November 17, 2021

To: Blair Martin, Planning Commission Chair
Members, Kenai Peninsula Borough Planning Commission

RE: Reintroduction of Ordinance 2019-30 SUB; An Ordinance Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures

key staff and commissioners could be present.

- **June 18, 2019:** The chair of the MSWG, Robert Ruffner, gave a presentation to the Assembly during its regularly scheduled meeting.
- **June 24, 2019:** The Planning Commission held a public hearing on the unnumbered ordinance proposed by the MSWG entitled "An Ordinance Amending KPB Chapter 21.25, Conditional Land Use Permits and Amending KPB Chapter 21.29, Material Site Permits".
- **July 15, 2019:** The Planning Commission held a work session on the ordinance proposed by the MSWG.
- **August 26, 2019:** The Planning Commission held a public hearing on the ordinance proposed by the MSWG. The commission voted to postpone further consideration until its September 9, 2019, regular meeting.
- **September 9, 2019:** The Planning Commission continued deliberation on the ordinance proposed by the MSWG. After voting on a number of proposed amendments to the ordinance, the commission requested staff arrange a work session with the Assembly and postponed further deliberation.
- **October 24, 2019:** A memo providing a sectional analysis of proposed amendments was sent from Sean Kelly, Deputy Borough Attorney, and Max Best, Planning Director, to KPB Assembly. The memo outlined amendments to the MSWG ordinance proposed by the Planning Commission. All amendments outlined within the memo were later included within Ordinance 2019-30 Substitute.
- **November 5, 2019:** A joint work session between the Assembly and the Planning Commission was held regarding Ordinance 2019-30. At its regularly scheduled meeting, Ordinance 2019-30 was introduced and the Assembly set a public hearing for December 3, 2019.
- **November 12, 2019:** At its regular meeting, the Planning Commission recommended approval of Ordinance 2019-30 and several amendments.
- **November 20, 2019:** In a memo to the KPB Assembly, Max Best, Planning Director, notified the Assembly of the Planning Commission's recommendation of approval and outlined recommended amendments proposed by the Planning Commission at its November 12, 2019, meeting. All amendments outlined within the memo were included within Ordinance 2019-30 Substitute.
- **December 3, 2019:** The Assembly held a public hearing on Ordinance 2019-30. A motion to amend by substitute was carried but the motion to enact the substitute ordinance failed. Assembly member Bjorkman gave notice of reconsideration of Ordinance 2019-30 Substitute.
- **January 7, 2020:** At the Assembly's regularly scheduled meeting, a motion to reconsider Ordinance 2019-30 Substitute failed.

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-**

**AN ORDINANCE AMENDING KPB 21.29, KPB 21.25, AND KPB 21.50.055
REGARDING MATERIAL SITE PERMITS, APPLICATIONS, CONDITIONS, AND
PROCEDURES**

- WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A of the 2019 Kenai Peninsula Borough Comprehensive Plan is to establish policies that better guide land use to minimize land use conflicts, maintain property values, protect natural systems and support individual land use freedoms; and
- WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 1 of the 2019 Comprehensive Plan is to adopt limited development standards for specific areas and uses to reduce potential off site impacts of development on adjoining uses and the natural environment; and
- WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 2 of the 2019 Comprehensive Plan is to update the Borough's existing conditional use regulations for gravel extraction and other uses to better address reoccurring land use conflicts; and
- WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 2a of the 2019 Comprehensive Plan is to clarify the broad purpose of the conditional use process and clear parameters for allowable conditional uses that include reasonable, project-specific conditions that reduce impacts on surrounding uses, and if/when a conditional use permit can be denied and consider establishing conditions that require larger setbacks, safety and visual screening, control on access routes, control on hours of operation, and address environmental concerns; and
- WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 2d of the 2019 Comprehensive Plan is to complete improvements to the rules guiding gravel extraction, with the goal of providing an appropriate balance between providing access to affordable materials for development and protecting quality of life for borough residents; and
- WHEREAS,** Goal 1 of the Mining and Minerals Processing section of the 1990 Kenai Peninsula Borough Coastal Management Program is to provide opportunities to explore, extract and process minerals, sand and gravel resources, while protecting environmental quality and other resource users; and
- WHEREAS,** an assembly subcommittee was formed in 2005 to review the material site code; and

WHEREAS, Ordinance 2006-01 (Substitute) codified as KPB 21.29 was adopted in 2006 after consideration of the subcommittee's report; and

WHEREAS, the planning department has been administering Ordinance 2006-01 (Substitute), codified as KPB 21.29 for 13 years; and

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

WHEREAS, the planning department has recognized that certain provisions of the material site ordinance could be better clarified for the operators, public, and staff; and

WHEREAS, the planning commission and planning department received comments expressing concerns about dust, noise, safety, and aesthetics; and

WHEREAS, approximately 253 registered prior existing use material sites and approximately 99 conditional land use permits for material sites have been granted since 1996;

WHEREAS, the planning department receives numerous complaints regarding unreclaimed parcels registered as nonconforming prior existing material sites which have not been regulated by KPB; and

WHEREAS, the assembly established a material site work group by adoption of resolution 2018-004 (Substitute) to engage in a collaborative discussion involving the public and industry to make recommendations regarding the material site code; and

WHEREAS, assembly resolution 2018-025 extended the deadline for the final report to be submitted to the assembly, administration and planning commission to April 30, 2019; and

WHEREAS, certain additional conditions placed on material site permits would facilitate a reduction in the negative secondary impacts of material sites, e.g. dust, noise, safety, and unsightliness of material sites; and

WHEREAS, at its regularly scheduled meeting of November 12, 2019, the planning commission recommended approval by unanimous consent;

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

SECTION 1. That KPB 21.25.030 is hereby amended, as follows:

21.25.030. - Definitions.

Unless the context requires otherwise, the following definitions apply to CLUPs:

Abandon means to cease or discontinue a use without intent to resume, but excluding short-term interruptions to use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility or during normal periods of vacation or seasonal closure. An "intent to resume" can be shown through continuous operation of a portion of the facility, maintenance of utilities, or outside proof of continuance, e.g., bills of lading or delivery records. Abandonment also means the cessation of use, regardless of voluntariness, for a specified period of time.

Animal feeding operation means a lot or facility (other than an aquatic animal production facility) where animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period.

- a. The same animals need not remain on the lot for 45 days or more; rather, some animals are fed or maintained on the lot 45 days out of any 12-month period, and
- b. Animals are "maintained" for purposes of this ordinance when they are confined in an area where waste is generated and/or concentrated or are watered, cleaned, groomed, or medicated in a confined area, even if the confinement is temporary.
- c. Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other.
- d. Slaughterhouses are animal feeding operations.

Animal unit means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighting [weighing] over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

Animal waste means animal excrement, animal carcasses, feed wasted, process wastewaters or any other waste associated with the confinement of animals from an animal feeding operation.

Animal waste management system means a combination of structures and nonstructural practices serving an animal feeding operation that provides for the collection, treatment, disposal, distribution, storage and land application of animal waste.

Aquifer means a subsurface formation that contains sufficient water-saturated permeable material to yield economical quantities of water to wells and springs.

Aquifer-confining layer means that layer of relatively impermeable soil below an aquifer, typically clay, which confines water.

Assisted living home means a residential facility that serves three or more adults who are not related to the owner by blood or marriage, or that receives state or that receives state or federal payment for service of the number of adults served. The services and activities may include, but are not limited to, housing and food services to its residents, assistance with activities of daily living, and personal assistance, and that complies with Alaska Statutes 47.32.0101 – 47.60.900, as amended.

Child care facility means a place where child care is regularly provided for children under the age of 12 for periods of time that are less than 24 hours in duration and that is licensed pursuant to AS 47.35.005 et seq., excluding child care homes and child care group homes, as currently written or hereafter amended.

Commercial means any provision of services, sale of goods, or use operated for production of income whether or not income is derived, including sales, barter, rental, or trade of goods and services.

Concentrated animal feeding operation (CAFO) means an animal feeding operation confining at least: (1) 1,000 swine weighing at least approximately 55 pounds; (2) 1,000 slaughter and feeder cattle; (3) 700 mature dairy cattle; (4) 500 horses; (5) 10,000 sheep or lambs; (6) 55,000 turkeys; (7) 100,000 laying hens or broilers (if the facility has continuous overflow watering); (8) 30,000 laying hens or broilers (if the facility has a liquid manure system); (9) 5,000 ducks; (10) 1,000 animal units; or (11) a combination of the above resulting in at least 1,000 animal units. Each individual parcel upon which a CAFO is located is a separate CAFO unless they adjoin each other.

Conditioning or processing material means a value-added process including batch plants, asphalt plants, screening, washing, and crushing by use of machinery.

Correctional community residential center (CCRC) means a community residential center, other than a correctional institution, for the short-term or temporary detention of prisoners in transition from a correctional institution, performing restitution, or undergoing rehabilitation or recovery from a legal infirmity. CCRCs may not be used for detention of prisoners who pose a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision. The determination of whether a prisoner poses a threat or danger to the public for violent

or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision shall be made by the commissioner of corrections for state prisoners and the United States Attorney General, or the U.S. Director of Bureau of Prisons for federal prisoners.

Correctional institution means a facility other than a correctional community residential center providing for the imprisonment or physical confinement or detention of prisoners under guard or twenty-four-hour physical supervision, such as prisons, prison farms, jails, reformatories, penitentiaries, houses of detention, detention centers, honor camps, and similar facilities.

Development plan means a plan created to describe a proposed development on a specific building site excluding material sites under KPB 21.29.020.

Disturbed includes active excavation and all areas necessary to use a parcel as a material site including but not limited to berms, stockpiles, and excavated areas excluding all areas reclaimed for alternate post mining land uses.

[EXHAUSTED MEANS THAT ALL MATERIAL OF A COMMERCIAL QUALITY IN A SAND, GRAVEL, OR MATERIAL SITE HAS BEEN REMOVED.]

Federal prisoners means offenders in the custody or control or under the care or supervision of the United States Attorney General or the Bureau of Prisons.

Groundwater means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.

Haul route includes the roads used to haul materials from the permit area to a roadway designated as collector, arterial or interstate by the Alaska Department of Transportation & Public Facilities.

Liquid manure or liquid animal waste system means any animal waste management system which uses water as the primary carrier of such waste into a primary retention structure.

Multi-purpose senior center is a facility where persons 60 years of age or older are provided with services and activities suited to their particular needs. The services and activities may include, but are not limited to, health examinations, legal assistance, recreation programs, general social activities, telephone reassurance programs, nutrition classes, meals at minimum cost, counseling, protective services, programs for shut-ins and education programs, and that complies with Alaska Statutes 47.60.010—47.60.090, as currently written or hereafter amended.

Permit area includes all excavation, processing, buffer and haul route areas of a CLUP or counter permit.

Person shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.

Prisoner means:

- a. a person held under authority of state law in official detention as defined in AS 11.81.900;
- b. includes a juvenile committed to the custody of the Alaska Department of Corrections Commissioner when the juvenile has been charged, prosecuted, or convicted as an adult.

Private school is a school comprised of kindergarten through 12th grade, or any combination of those grades, that does not receive direct state or federal funding and that complies with either Alaska Statute 14.45.030 or 14.45.100—14.45.130, as currently written or hereafter amended.

Public school is a school comprised of kindergarten through 12th grade, or any combination of those grades, that is operated by the State of Alaska or any political subdivision of the state.

Sand, gravel or material site means an area used for extracting, quarrying, or conditioning gravel or substances from the ground that are not subject to permits through the state location (mining claim) system (e.g., gold, silver, and other metals), nor energy minerals including but not limited to coal, oil, and gas.

Seasonal high groundwater table means the highest level to which the groundwater rises on an annual basis.

Senior housing project means senior housing as defined for purposes of construction or operation in 15 Alaska Administrative Code 151.950(c), as currently written or hereafter amended.

Stable condition means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes.

Surface water means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.

Topsoil means material suitable for vegetative growth.

Vicinity means the same as the area of notification.

Waterbody means any lake, pond, stream, riparian wetland, or groundwater into which stormwater runoff is directed.

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

SECTION 2. That KPB 21.29 is hereby amended, as follows:

CHAPTER 21.29. MATERIAL SITE PERMITS

21.29.010. Material extraction exempt from obtaining a permit.

- A. Material extraction which disturbs an area of less than one acre that is not in a mapped flood plain or subject to 21.29.010(B), does not enter the water table, and does not cross property boundaries, does not require a permit. There will be no excavation within 20 feet of a right-of-way or within ten feet of a lot line.
- B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood Service Area does not require a permit, however, operators subject to this exemption shall provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations.
- C. A prior existing use under KPB 21.29.120 does not require a material extraction permit, but a floodplain development permit is required for all activities within any mapped special flood hazard area.
- D. Material extraction incidental to site development does not require a permit when an approved site development plan is on file with the planning department. Site development plans are approved by the planning director and are valid for one year. The site development plan may be renewed on an annual basis subject to the planning director's approval.

21.29.020. Material extraction and activities requiring a permit.

- A. *Counter permit.* A counter permit is required for material extraction which disturbs no more than 2.5 cumulative acres and does not enter the water table. Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension.

- B. *Conditional land use permit.* A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. A CLUP is required for materials processing. A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPS and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.

21.29.030. Application procedure.

- A. In order to obtain a counter permit or CLUP, an applicant shall first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application shall include the following items:
1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
 2. Expected life span of the material site;
 3. A buffer plan consistent with KPB 21.29.050(A)(2);
 4. Reclamation plan consistent with KPB 21.29.060;
 5. The depth of excavation;
 6. Type of material to be extracted and type of equipment to be used;
 7. Any voluntary permit conditions the applicant proposes. Failure to include a proposed voluntary permit condition in the application does not preclude the applicant from proposing or agreeing to voluntary permit conditions at a later time;
 8. Surface water protection measures, if any, for adjacent properties designed by a civil engineer, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;
 9. A site plan and field verification prepared by a professional surveyor licensed and registered in the State of Alaska, including the following information:

- a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
- b. Proposed buffers consistent with KPB 21.29.050(A)(2), or alternate buffer plan;
- c. Identification of all encumbrances, including, but not limited to easements;
- d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to the issuance of the material site permit;
- e. Anticipated haul routes;
- f. Location and [DEPTH] elevation of test holes, and depth of groundwater, if encountered between May and December. At least one test hole per ten acres of excavated area is required to be dug. The test holes shall be at least four feet below the proposed depth of excavation;
- g. Location of wells of adjacent property owners within 300 feet of the proposed parcel boundary;
- h. Location of any water body on the parcel, including the location of any riparian wetland as determined by "Wetland Mapping and Classification of the Kenai Lowland, Alaska" maps created by the Kenai Watershed Forum;
- [I. SURFACE WATER PROTECTION MEASURES FOR ADJACENT PROPERTIES, INCLUDING THE USE OF DIVERSION CHANNELS, INTERCEPTION DITCHES, ON-SITE COLLECTION DITCHES, SEDIMENT PONDS AND TRAPS, AND SILT FENCE; PROVIDE DESIGNS FOR SUBSTANTIAL STRUCTURES; INDICATE WHICH STRUCTURES WILL REMAIN AS PERMANENT FEATURES AT THE CONCLUSION OF OPERATIONS, IF ANY;]
- [J]i. Location of any processing areas on parcel, if applicable;
- [K]j. North arrow;
- [L]k. The scale to which the site plan is drawn;
- [M]l. Preparer's name, date and seal;

[N]m. Field verification shall include staking the boundary of the parcel at sequentially visible intervals. The planning director may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious or staking is unnecessary.

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

21.29.040. Standards for sand, gravel or material sites.

- A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:
1. Protects against the lowering of water sources serving other properties;
 2. Protects against physical damage to [OTHER] adjacent properties;
 3. [MINIMIZES] Protects against off-site movement of dust;
 4. [MINIMIZES] Protects against noise disturbance to other properties;
 5. [MINIMIZES] Protects against visual impacts of the material site; [AND]
 6. Provides for alternate post-mining land uses[.];
 7. Protects Receiving Waters against adverse effects to fish and wildlife habitat;
 8. Protects against traffic impacts; and
 9. Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.

21.29.050. Permit conditions.

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

1. ~~[PARCEL]~~Permit boundaries. [ALL BOUNDARIES OF THE SUBJECT PARCEL] The buffers and any easements or right-of-way abutting the proposed permit area shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter. Field verification and staking will require the services of a professional land surveyor. Stakes shall be in place [AT TIME OF APPLICATION]prior to issuance of the permit.
- [2. *BUFFER ZONE.* A BUFFER ZONE SHALL BE MAINTAINED AROUND THE EXCAVATION PERIMETER OR PARCEL BOUNDARIES. WHERE AN EASEMENT EXISTS, A BUFFER SHALL NOT OVERLAP THE EASEMENT, UNLESS OTHERWISE CONDITIONED BY THE PLANNING DIRECTOR OR PLANNING COMMISSION.
 - A. THE BUFFER ZONE SHALL PROVIDE AND RETAIN A BASIC BUFFER OF:
 - I. 50 FEET OF UNDISTURBED NATURAL VEGETATION, OR
 - II. A MINIMUM SIX-FOOT EARTHEN BERM WITH AT LEAST A 2:1 SLOPE, OR
 - III. A MINIMUM SIX-FOOT FENCE.
 - B. A 2:1 SLOPE SHALL BE MAINTAINED BETWEEN THE BUFFER ZONE AND EXCAVATION FLOOR ON ALL INACTIVE SITE WALLS. MATERIAL FROM THE AREA DESIGNATED FOR THE 2:1 SLOPE MAY BE REMOVED IF SUITABLE, STABILIZING MATERIAL IS REPLACED WITHIN 30 DAYS FROM THE TIME OF REMOVAL.
 - C. THE PLANNING COMMISSION OR PLANNING DIRECTOR SHALL DESIGNATE ONE OR A COMBINATION OF THE ABOVE AS IT DEEMS APPROPRIATE. THE VEGETATION AND FENCE SHALL BE OF SUFFICIENT HEIGHT AND DENSITY TO PROVIDE VISUAL AND NOISE SCREENING OF THE PROPOSED USE AS DEEMED APPROPRIATE BY THE PLANNING COMMISSION OR PLANNING DIRECTOR.
 - D. BUFFERS SHALL NOT CAUSE SURFACE WATER DIVERSION WHICH NEGATIVELY IMPACTS ADJACENT PROPERTIES OR WATER BODIES. SPECIFIC FINDINGS ARE REQUIRED TO ALTER THE BUFFER REQUIREMENTS OF KPB 21.29.050(A)(2)(A) IN ORDER TO MINIMIZE NEGATIVE IMPACTS FROM SURFACE WATER DIVERSION. FOR PURPOSES OF THIS SECTION, SURFACE WATER DIVERSION IS DEFINED AS EROSION, FLOODING, DEHYDRATION

OR DRAINING, OR CHANNELING. NOT ALL SURFACE WATER DIVERSION RESULTS IN A NEGATIVE IMPACT.

- E. AT ITS DISCRETION, THE PLANNING COMMISSION MAY WAIVE BUFFER REQUIREMENTS WHERE THE TOPOGRAPHY OF THE PROPERTY OR THE PLACEMENT OF NATURAL BARRIERS MAKES SCREENING NOT FEASIBLE OR NOT NECESSARY. BUFFER REQUIREMENTS SHALL BE MADE IN CONSIDERATION OF AND IN ACCORDANCE WITH EXISTING USES OF ADJACENT PROPERTY AT THE TIME OF APPROVAL OF THE PERMIT. THERE IS NO REQUIREMENT TO BUFFER THE MATERIAL SITE FROM USES WHICH COMMENCE AFTER THE APPROVAL OF THE PERMIT.]

2. *Buffer Area.* Material sites shall maintain buffer areas in accord with this section.

- a. A buffer area of a maximum of 100 feet shall be established between the area of excavation and the parcel boundaries. The buffer area may include one or more of the following: undisturbed natural vegetation, a minimum six-foot fence, a minimum six-foot berm or a combination thereof.
- b. A 2:1 slope shall be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
- c. Where an easement exists, a buffer shall not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable.
- d. The buffer area may be reduced where the planning commission or planning director, as applicable, has approved an alternate buffer plan. The alternate buffer plan must consist of natural undisturbed vegetation, a minimum six-foot berm, or a minimum six-foot fence or a combination thereof; unless the permittee proposes another solution approved by the planning commission or planning director, as applicable, to meet this condition.
- e. The buffer requirements may be waived by the planning commission or planning director, as applicable, where the topography of the property or the placement of natural barriers makes screening not feasible or unnecessary.

- f. There is no requirement to buffer a material site from uses that commence after approval of the permit.
 - g. When a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required.
- 3. *Processing.* In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of [OF ADJACENT PROPERTY AT THE TIME] the properties in the vicinity at the time of approval of the permit.
- 4. *Water source separation.*
 - a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.
 - b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation [FROM]between extraction operations and the seasonal high water table be maintained.
 - c. All CLUPS shall be issued with a condition which requires that a [TWO] four-foot vertical separation [FROM]between extraction operations and the seasonal high water table be maintained.
 - d. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.
- 5. *Excavation in the water table.* Excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission based on the following:
 - a. Certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not

negatively impact the quantity of an aquifer serving existing water sources.

- b. The installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate, and water elevation.
- c. Groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three-month intervals by a qualified independent civil engineer or professional hydrogeologist, for at least one year prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
- d. Operations shall not breach an aquifer-confining layer.

6. *Waterbodies.*

- a. An undisturbed buffer shall be left and no earth material extraction activities shall take place within [100] 200 linear feet from excavation limits and the ordinary high water level of surface water bodies such as a lake, river, stream, [OR OTHER WATER BODY, INCLUDING] riparian wetlands and mapped floodplains as defined in KPB 21.06. This regulation shall not apply to man-made waterbodies being constructed during the course of the materials extraction activities. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.
- b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.

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

8. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads as required by KPB 14.40.175 and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.

9. *Subdivision.* Any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit. The planning director may issue a written exemption from the amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a material site and all original permit conditions can be met.
10. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
11. *Hours of operation.* [ROCK CRUSHING EQUIPMENT SHALL NOT BE OPERATED BETWEEN 10:00 P.M. AND 6:00 A.M.]
 - a. Processing equipment shall not be operated between 7:00 p.m. and 6:00 a.m.
 - b. The planning commission may grant exceptions to increase the hours of operation and processing based on surrounding land uses, topography, screening the material site from properties in the vicinity and conditions placed on the permit by the planning commission to mitigate the noise, dust and visual impacts caused by the material site.
12. *Reclamation.*
 - a. Reclamation shall be consistent with the reclamation plan approved by the planning commission or planning director as appropriate in accord with KPB 21.29.060.
 - b. [AS A CONDITION OF ISSUING THE PERMIT, THE APPLICANT SHALL SUBMIT A RECLAMATION PLAN AND POST A BOND TO COVER THE ANTICIPATED RECLAMATION COSTS IN AN AMOUNT TO BE DETERMINED BY THE PLANNING DIRECTOR. THIS BONDING REQUIREMENT SHALL NOT APPLY TO SAND, GRAVEL OR MATERIAL SITES FOR WHICH AN EXEMPTION FROM STATE BOND REQUIREMENTS FOR SMALL OPERATIONS IS APPLICABLE PURSUANT TO AS 27.19.050.] The applicant shall operate the material site consistent with the approved reclamation plan and provide bonding pursuant to 21.29.060(B). This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.
13. *Other permits.* Permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation,

and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC air and water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives. Any violation of these regulations or permits reported to or observed by borough personnel will be forwarded to the appropriate agency for enforcement.

14. [~~VOLUNTARY~~]Volunteered permit conditions. Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission for CLUPs or the planning director for counter permits. Such conditions must be consistent with the standards set forth in KPB 21.29.040(A). Planning commission approval of such conditions shall be contingent upon a finding that the conditions will be in the best interest of the borough and the surrounding property owners. [~~VOLUNTARY~~] Volunteered permit conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in [~~VOLUNTARY~~] volunteered permit conditions may be proposed [AT] by permit [~~RENEWAL OR AMENDMENT~~] modification.
15. Signage. For permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access, whichever is more visible. Sign dimensions shall be no more than 15" by 15" and must contain the following information: the phrase "Permitted Material Site" along with the permittee's business name and a contact phone number.
16. Appeal. No clearing of vegetation shall occur within the 100-foot maximum buffer area from the permit boundary nor shall the permit be issued or operable until the deadline for the appeal, pursuant to KPB 21.20, has expired.
17. Sound level.
 - a. No sound resulting from the materials extraction activities shall create a sound level, when measured at or within the property boundary of the adjacent land, that exceeds 75 dB(A).

- b. For any sound that is of short duration between the hours of 7 a.m. and 7 p.m. the levels may be increased by:
 - i. Five dB(A) for a total of 15 minutes in any one hour; or
 - ii. Ten dB(A) for a total of five minutes in any hour; or
 - iii. Fifteen db(A) for a total of one and one-half minutes in any one-hour period.
 - c. At its discretion, the planning commission or planning director, as applicable, may reduce or waive the sound level requirements on any or all property boundaries. Sound level requirements shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
 - d. Mandatory condition KPB 21.29.050(A)(17) shall expire 365 days from adoption of KPB 21.29.050(A)(17) unless extended or modified by the assembly.
18. *Reverse signal alarms.* Reverse signal alarms, used at the material site on loaders, excavators, and other earthmoving equipment shall be more technically advanced devices; such as, a multi-frequency “white noise” alarms rather than the common, single (high-pitch) tone alarms. At its discretion, the planning commission or planning director, as applicable, may waive this requirement or a portion of this requirement. The waiver of this requirement shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
19. *Ingress and egress.* The planning commission or planning director may determine the points of ingress and egress for the material site. The permittee is not required to construct haul routes outside the parcel boundaries of the material site. Driveway authorization must be acquired, from either the state through an “Approval to Construct” or a borough road service area as appropriate, prior to issuance of a material site permit when accessing a public right-of-way.
20. *Dust suppression.* Dust suppression shall be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on haul routes. Based on surrounding land uses the planning commission or planning director, as applicable, may waive or reduce the requirement for dust suppression on haul routes.

21. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8) must be approved by a licensed civil engineer.
22. Groundwater elevation. All material sites must maintain one monitoring tube per ten acres of excavated area four feet below the proposed excavation.
23. Setback. Material site excavation areas shall be 250-feet from the property boundaries of any local option zoning district, existing public school ground, private school ground, college campus, child care facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation shall be included in the 250-foot setback.

21.29.055. Decision.

The planning commission or planning director, as applicable, shall approve permit applications meeting the mandatory conditions or shall disapprove permit applications that do not meet the mandatory conditions. The decision shall include written findings supporting the decision, and when applicable, there shall be written findings supporting any site-specific alterations to the mandatory condition as specifically allowed by KPB 21.29.050(A)(2)(a), (2)(c), (2)(d), (2)(e), (2)(g), (3), (4)(d), (5), (11)(b), (12), (14), (17)(c), (18), (19), and (20) and as allowed for the KPB 21.29.060 reclamation plan.

21.29.060. Reclamation plan.

- A. All material site permit applications require an overall reclamation plan along with a five-year reclamation plan. A site plan for reclamation shall be required including a scaled drawing with finished contours. A five-year reclamation plan must be submitted with a permit extension request.
- B. The applicant shall revegetate with a non-invasive plant species and reclaim all disturbed land [UPON EXHAUSTING THE MATERIAL ON-SITE, OR WITHIN A PRE-DETERMINED TIME PERIOD FOR LONG-TERM ACTIVITIES, SO AS TO LEAVE THE LAND IN A STABLE CONDITION. RECLAMATION MUST OCCUR FOR ALL EXHAUSTED AREAS OF THE SITE EXCEEDING FIVE ACRES BEFORE A FIVE-YEAR RENEWAL PERMIT IS ISSUED, UNLESS OTHERWISE REQUIRED BY THE PLANNING COMMISSION. IF THE MATERIAL SITE IS ONE ACRE OR LESS IN SIZE AND HAS BEEN GRANTED A CLUP DUE TO EXCAVATION IN THE WATER TABLE, RECLAMATION MUST BE PERFORMED AS SPECIFIED BY THE PLANNING COMMISSION OR PLANNING DIRECTOR IN THE CONDITIONAL USE OR COUNTER PERMIT] within the time period approved with the reclamation plan so as to leave the land in a stable condition. Bonding shall be required at \$2,000.00 per acre for all acreage included in the current five-year reclamation plan.

In the alternative, the planning director may accept a civil engineer's estimate for determining the amount of bonding. If the applicant is bonded with the state, the borough's bonding requirement is waived. Compliance with reclamation plans shall be enforced under KPB 21.50.

- C. The following measures must be considered in the [PREPARING] preparation, approval and [IMPLEMENTING] implementation of the reclamation plan, although not all will be applicable to every reclamation plan.
1. Topsoil that is not promptly redistributed to an area being reclaimed will be separated and stockpiled for future use. [THIS MATERIAL WILL BE PROTECTED FROM EROSION AND CONTAMINATION BY ACIDIC OR TOXIC MATERIALS AND PRESERVED IN A CONDITION SUITABLE FOR LATER USE.]
 2. The area will be backfilled, graded and recontoured using strippings, overburden, and topsoil [TO A CONDITION THAT ALLOWS FOR THE REESTABLISHMENT OF RENEWABLE RESOURCES ON THE SITE WITHIN A REASONABLE PERIOD OF TIME. IT WILL BE STABILIZED TO A CONDITION THAT WILL ALLOW SUFFICIENT MOISTURE FOR REVEGETATION] so that it will be stabilized to a condition that will allow for the revegetation as required by KPB 21.29.060(B).
 3. [SUFFICIENT QUANTITIES OF STOCKPILED OR IMPORTED TOPSOIL WILL BE SPREAD OVER THE RECLAIMED AREA TO A DEPTH OF FOUR INCHES TO PROMOTE NATURAL PLANT GROWTH THAT CAN REASONABLY BE EXPECTED TO REVEGETATE THE AREA WITHIN FIVE YEARS. THE APPLICANT MAY USE THE EXISTING NATURAL ORGANIC BLANKET REPRESENTATIVE OF THE PROJECT AREA IF THE SOIL IS FOUND TO HAVE AN ORGANIC CONTENT OF 5% OR MORE AND MEETS THE SPECIFICATION OF CLASS B TOPSOIL REQUIREMENTS AS SET BY ALASKA TEST METHOD (ATM) T-6.] The [MATERIAL] topsoil used for reclamation shall be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by a licensed engineer.
 4. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation shall be removed from the site, buried or burned. Topsoil and other organics will be spread on the backfilled surface to inhibit erosion and promote natural revegetation.
 5. [PEAT AND T]Topsoil mine operations shall ensure a minimum of [TWO] four inches of suitable growing medium is left or replaced on

the site upon completion of the reclamation activity (unless otherwise authorized).

6. Ponding may be used as a reclamation method as approved by the planning commission.

- D. The five-year reclamation plan shall describe the total acreage to be reclaimed [EACH YEAR, A LIST OF EQUIPMENT (TYPE AND QUANTITY) TO BE USED IN RECLAMATION, AND A TIME SCHEDULE OF RECLAMATION MEASURES] relative to the total excavation plan.

21.29.070. Permit extension and revocation.

- A. Conditional land use permittees must submit a request in writing for permit extension every five years after the permit is issued. Requests for permit extension must be made at least 30 days prior to permit expiration. Counter permittees must submit any request for a 12-month extension at least 30 days prior to the expiration of the original 12-month permit period.
- B. A permit extension certificate for a CLUP may be granted by the planning director after 5 years, and after one year for a counter permit where no modification to operations or conditions are proposed.
- C. Permit extension may be denied if: (1) reclamation required by this chapter and the original permit has not been performed; (2) the permittee is otherwise in noncompliance with the original permit conditions; or (3) the permittee has had a permit violation in the last two years and has not fulfilled compliance requests.
- D. A modification application shall be processed pursuant to KPB 21.29.030-050 with public notice given as provided by KPB 21.25.060 when operators request modification of their permit conditions based on changes in operations set forth in the modification application.
- E. There shall be no fee for permit extensions approved by the planning director. The fee for a permit modification processed under KPB 21.29.070(D) will be the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.
- F. Failure to submit a request for extension will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KPB 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.

- G. Permits may be revoked pursuant to KPB 21.50. 21.29.080. - Permit termination.

When a permit expires, is revoked, or a permittee requests termination of their permit, a review of permit conditions and site inspections will be conducted by the planning department to ensure code compliance and verify site reclamation prior to termination. When the planning director determines that a site qualifies for termination, a termination document shall be issued to the permittee.

21.29.090. Permit modifications.

If a permittee revises or intends to revise operations (at a time other than permit extension) so that they are no longer consistent with the original application, a permit modification is required. The planning director shall determine whether the revision to operations requires a modification. Permit modification shall be processed in the same manner as original permits.

21.29.100. Recordation.

All permits, permit extensions, modified permits, prior existing uses, and terminations shall be recorded. Failure to record a material site document does not affect the validity of the documents.

21.29.110. Violations.

- A. Violations of this chapter shall be governed by KPB 21.50.
- B. In addition to the remedies provided in KPB 21.50, the planning director may require bonding in a form and amount adequate to protect the borough's interests for an owner or operator who has been cited for three violations of KPB 21.50, 21.25, and 21.29 within a three-year period. The violations need not be committed at the same material site. Failure to provide requested bonding may result in permit revocation proceedings.

21.29.120. Prior existing uses.

- A. Material sites are not held to the standards and conditions of a CLUP if a prior existing use (PEU) determination was granted for the parcel in accordance with KPB 21.29.120(B). To qualify as a PEU, a parcel's use as a material site must have commenced or have been operated after May 21, 1986, and prior to May 21, 1996, provided that the subject use continues in the same location. In no event shall a prior existing use be expanded beyond the smaller of the lot, block, or tract lines as they existed on May 21, 1996. If a parcel is further subdivided after May 21, 1996, the pre-existing use may not be expanded to any lot, tract, or parcel where extraction had not

occurred before or on February 16, 1999. If a parcel is subdivided where extraction has already occurred, the prior existing use is considered abandoned, and a CLUP must be obtained for each parcel intended for further material site operations. The parcel owner may overcome this presumption of abandonment by showing that the subdivision is not inconsistent with material site operation. If a parcel subject to a prior existing use is conveyed, the prior existing use survives the conveyance.

- B. Owners of sites must have applied to be registered as a prior existing use prior to January 1, 2001.
- C. [ANY PRIOR EXISTING USE THAT HAS NOT OPERATED AS A MATERIAL SITE BETWEEN MAY 21, 1996, AND MAY 21, 2011, IS CONSIDERED ABANDONED AND MUST THEREAFTER COMPLY WITH THE PERMIT REQUIREMENTS OF THIS CHAPTER. THE PLANNING DIRECTOR SHALL DETERMINE WHETHER A PRIOR EXISTING USE HAS BEEN ABANDONED. AFTER GIVING NOTICE TO THE PARCEL OWNER THAT A PEU IS CONSIDERED ABANDONED, A PARCEL OWNER MAY PROTEST THE TERMINATION OF THE PEU BY FILING WRITTEN NOTICE WITH THE PLANNING DIRECTOR ON A FORM PROVIDED BY THE PLANNING DEPARTMENT. WHEN A PROTEST BY A PARCEL OWNER IS FILED, NOTICE AND AN OPPORTUNITY TO MAKE WRITTEN COMMENTS REGARDING PRIOR EXISTING USE STATUS SHALL BE ISSUED TO OWNERS OF PROPERTY WITHIN A ONE-HALF MILE RADIUS OF THE PARCEL BOUNDARIES OF THE SITE. THE OWNER OF THE PARCEL SUBJECT TO THE PRIOR EXISTING USE MAY SUBMIT WRITTEN INFORMATION, AND THE PLANNING DIRECTOR MAY GATHER AND CONSIDER ANY INFORMATION RELEVANT TO WHETHER A MATERIAL SITE HAS OPERATED. THE PLANNING DIRECTOR MAY CONDUCT A HEARING IF HE OR SHE BELIEVES IT WOULD ASSIST THE DECISION-MAKING PROCESS. THE PLANNING DIRECTOR SHALL ISSUE A WRITTEN DETERMINATION WHICH SHALL BE DISTRIBUTED TO ALL PERSONS MAKING WRITTEN COMMENTS. THE PLANNING DIRECTOR'S DECISION REGARDING TERMINATION OF THE PRIOR EXISTING USE STATUS MAY BE APPEALED TO THE PLANNING COMMISSION WITHIN 15 DAYS OF THE DATE OF THE NOTICE OF DECISION.]

The owner of a material site that has been granted a PEU determination shall provide proof of compliance with AS 27.19.030 – 050 concerning reclamation to the planning department no later than July 1, 2021. The proof shall consist of an Alaska Department of Natural Resources (DNR) approved reclamation plan and receipt for bonding or a letter of intent filed with DNR.

- 1. The planning department may request proof of continued compliance with AS 27.19.030 – 050 on an annual basis.
- 2. Pursuant to KPB 21.29.110 the enforcement process and remedies set forth in KPB 21.50 shall govern if the proof that the statutory

requirements contained in AS 27.19.030-050 is not provided to the planning department.

SECTION 3. That KPB 21.50.055 is hereby amended, as follows:

21.50.055. Fines.

- A. Following are the fines for violations of this title. Each day a violation occurs is a separate violation. Violations begin to accrue the date the enforcement notice is issued and continue to the date the enforcement is initially set for hearing. The fine for a violation may not be reduced by the hearing officer to less than the equivalent of one day's fine for each type of violation.

Code Chapter & Section	Violation Description	Daily Fine
KPB 20.10.030(A)	Offering land for sale without final plat approval	\$300.00
KPB 20.10.030(B)	Filing/recording unapproved subdivision/plat	\$300.00
KPB 20.10.030(C)	Violation of subdivision code or condition	\$300.00
KPB 21.05.040(C)	Violation of variance conditions	\$300.00
KPB 21.06.030(D)	Structure or activity prohibited by KPB 21.06	\$300.00
KPB 21.06.040	Failure to obtain a Development Permit/Floodplain Management	\$300.00
KPB 21.06.045	Failure to obtain a SMFDA Development Permit/Violation of SMFDA permit conditions/Floodplain Management	\$300.00
KPB 21.06.050	Violation of permit conditions/Floodplain Management	\$300.00
KPB 21.18.071	Failure to obtain staff permit/Violation of staff permit/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.072	Failure to obtain limited commercial activity permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.075	Prohibited use or structure/Anadromous Streams Habitat Protection	\$300.00

KPB 21.18.081	Failure to obtain Conditional Use Permit/Violation of Conditional Use Permit Condition/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.090	Failure to obtain prior existing use/structure permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.135(C)	Violation of emergency permit conditions/anadromous stream habitat protection	\$300.00
KPB 21.25.040	Failure to Obtain a Permit/Material Site/Correctional community residential center/Concentrated Animal Feeding Operation	\$300.00
KPB 21.28.030	Violation of permit conditions/Concentrated Animal Feeding Operations	\$300.00
KPB 21.29.020	Failure to Obtain a counter permit/Material Site Permits	\$300.00
KPB 21.29.050	Violation of Conditional Land Use Permit Conditions/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
KPB 21.29.060	Violation of Reclamation Plan/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
<u>KPB 21.29.120</u>	<u>Failure to Provide Reclamation Plan and Proof of Bonding or Letter of Intent</u>	<u>\$300.00</u>
KPB 21.44.100	Violation of Pre-existing structures/Local Option Zoning	\$300.00
KPB 21.44.110(D)	Prohibited expansion of nonconforming use/Local Option Zoning	\$300.00
KPB 21.44.110(E)	Prohibited Change in Use/Local Option Zoning	\$300.00
KPB 21.44.110(G)	Violation of Conditions on Nonconforming Use/Local Option Zoning	\$300.00
KPB 21.44.130(C)(D)	Violation of Home Occupation Standards and Conditions/Local Option Zoning	\$300.00

KPB 21.44.130(F)	Disallowed Home Occupation/Local Option Zoning	\$300.00
KPB 21.44.135	Failure to file development notice	\$300.00
KPB 21.44.160(A)(B)	Prohibited use	\$300.00
KPB 21.44.160(C)	Violation of Development Standards/Single Family Zoning/Local Option Zoning	\$300.00
KPB 21.44.165(A)(B)	Prohibited use	\$300.00
KPB 21.44.165(C)	Violation of Development Standards/Small Lot Residential Zoning/Local Option Zoning	\$300.00
KPB 21.44.170(A)(B)	Prohibited use	\$300.00
KPB 21.44.170(C)	Violation of Development Standards/Rural Residential District/Local Option Zoning	\$300.00
KPB 21.44.175(B)(C)	Prohibited Use	\$300.00
KPB 21.44.175(D)	Violation of Development Standards/Residential Waterfront	\$300.00
KPB 21.44.180(A)(B)	Prohibited Use	\$300.00
KPB 21.44.180(C)	Violation of Development Standards/Multi-Family Residential District/Local Option Zoning	\$300.00
KPB 21.44.190(A)(B)	Prohibited Use	\$300.00
KPB 21.44.190(C)	Violation of Development Standards/Industrial District/Local Option Zoning	\$300.00
KPB 21.46.030(b)	Failure to maintain bear-resistant garbage cans/Local option zone/Birch and Grove Ridge subdivisions Rural Residential District	\$300.00
KPB 21.50.100(F)	Removal of posted enforcement notice	\$300.00
KPB 21.50.100(G)	Violation of enforcement notice	\$1,000.00

KPB 21.50.130(I)	Violation of an enforcement order	\$1,000.00
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SECTION 4. That this ordinance shall become effective upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2019.

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

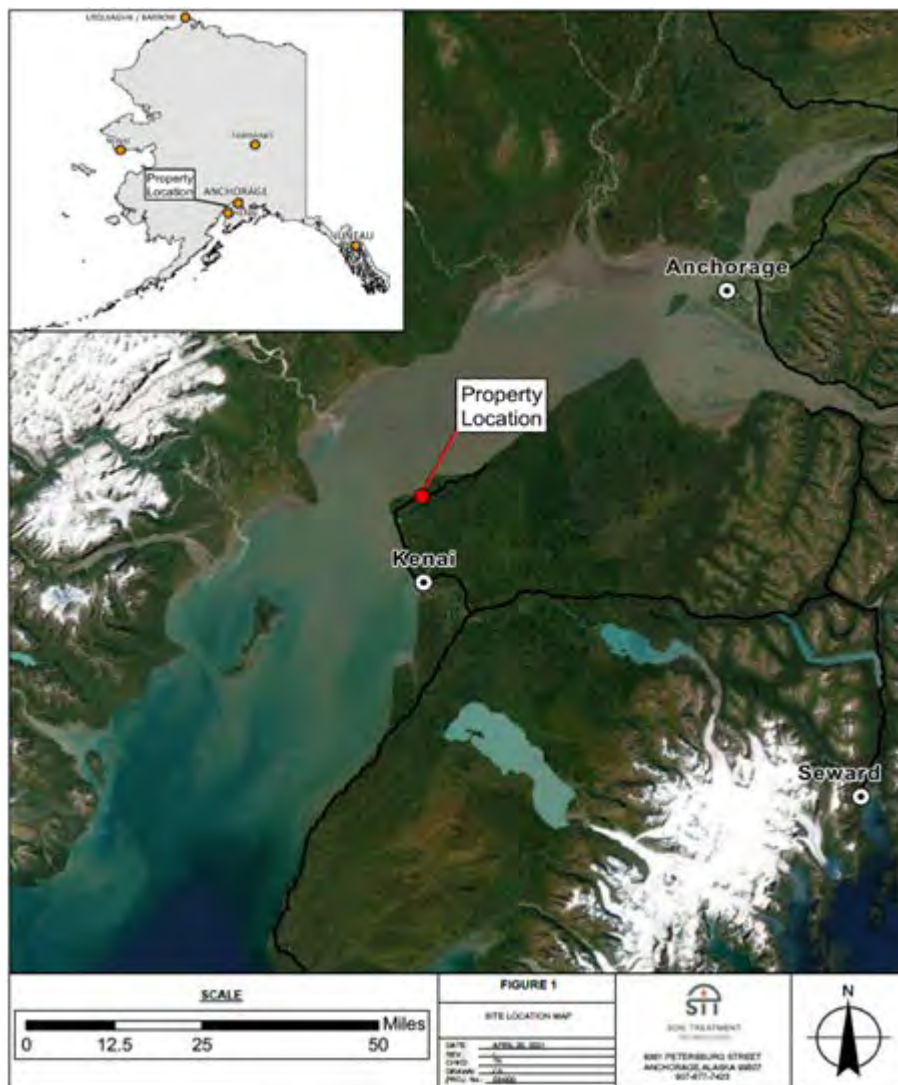
Good afternoon everyone,

I wanted to provide you the latest report and approval letter from the State DEC in regards to the soil burner in Nikiski. All this information can be found directly on the link provided but I have provided the jest of it here for a quick review.

<https://dec.alaska.gov/spar/csp/stt-thermal-soil-remediation/>

OPERATIONS PLAN FOR NIKISKI SOIL TREATMENT FACILITY

Introduction



Property Location Map (Figure 1). Courtesy: STT Operations Plan.



Revised Site Map (Revised Figure 2). Courtesy: STT Operations Plan.

In August 2021, Soil Treatment Technologies (STT) submitted an Operations Plan for a new thermal treatment facility for petroleum-contaminated soil. The facility site is located at 52520 Kenai Spur Highway in Nikiski, Alaska.

The Operations Plan was submitted to the Department of Environmental Conservation (DEC) for approval in accordance with [18 AAC 75.365 and 18 AAC 78.273 \(PDF\)](#).

A public comment period for this application was held from August 21 to September 4, 2021. We thank you for your participation.

All comments were reviewed and considered. As a result, DEC requested changes to the Operations Plan from STT for comments received which identified issues under the regulatory purview of the Contaminated Sites Program. The DEC Contaminated Sites Program has reviewed the revised plan to ensure that procedures are in place to protect human health, the environment, and Alaska's natural resources. The revised Operations Plan and subsequent approval letter are provided below.

Please see the DEC Contaminated Sites Program's Responses to Comments below, which will be available online for 30 days (from this date, November 10). After 30 days, the Responses to Comments will be available by request.

For questions, contact Lisa Krebs-Barsis at 907-269-7691 or lisa.krebs-barsis@alaska.gov.

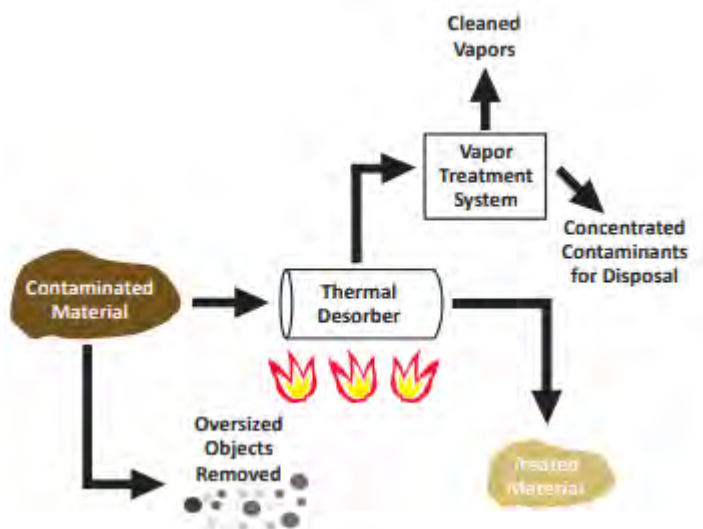
Documents

- [Response to Comments \(PDF\)](#)
- [STT Final Operations Plan \(PDF\)](#)
- [DEC Approval Letter, 11/10/2021 \(PDF\)](#)

What is Thermal Desorption?

STT's facility uses thermal desorption as its treatment method. The following information comes from the Environmental Protection Agency's (EPA) *A Citizen's Guide to Thermal Desorption*:

Thermal desorption removes organic contaminants from soil by heating them in a machine called a "thermal desorber." This evaporates the contaminants. Evaporation changes the contaminants into gases and separates them from the solid material.



Thermal desorber heats contaminated material to evaporate contaminants.
Courtesy: EPA A Citizen's Guide to thermal Desorption

The desorber can be used onsite or offsite. Soil may be prepared for treatment by screening out debris and oversized material. The prepared soil is placed in the thermal desorber to be heated.

Gas collection equipment captures the contaminated vapors. Vapors are destroyed in the thermal oxidizer, which heats the vapors to temperatures high enough to convert them to carbon dioxide and water vapor.

It is important to note that thermal desorption is not the same as an incinerator which heats contaminated materials to temperatures high enough to destroy the contaminants.

For more details on thermal desorption, please see EPA's [A Citizen's Guide to Thermal Desorption. \(PDF\)](#)

Frequently Asked Questions

Show All Answers

How will the proposed facility operate?

What regulatory authority does the DEC Contaminated Sites Program have regarding the Nikiski facility?

How will DEC ensure the facility is operating in accordance with the Operations Plan?

How Will DEC Ensure the Property is Not Contaminated When the Facility closes?

The full contents of all submitted comments and responses are considered public record and will be posted online for 30 days after publication. The Responses to Comments will be available in the DEC Soldotna Office and by request.

The State of Alaska, Department of Environmental Conservation complies with Title II of the Americans with Disabilities Act of 1990. If you are a person with a disability who may need an accommodation in order to participate in this public process, please contact Brian Blessington at 907-269-7660 or TDD Relay Service 1-800-770-8973/TTY or dial 711 to ensure that any necessary accommodations can be provided.

Thank you,

Melanie Aeschliman, Planning Director

Kenai Peninsula Borough Planning

Phone: (907) 714-2200

Email: maeschliman@kpb.us

KENAI PENINSULA BOROUGH
144 North Binkley Street
Soldotna, Alaska 99669



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.



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

**Department of Environmental
Conservation**

DIVISION OF SPILL PREVENTION AND RESPONSE
Contaminated Sites Program

555 Cordova Street
Anchorage, AK 99501
Main: 907-269-7520
Fax: 907-269-7687
www.dec.alaska.gov

Return Receipt:7018 3090 0001 0823 5474

November 10, 2021

Mr. Nathan Oberlee, Principal
Soil Treatment Technologies, LLC
8361 Petersburg St.
Anchorage, AK 99507

Re: **Approval of Soil Treatment Technologies, LLC-Thermal Treatment Operations Plan for Category D Operations**

Dear Mr. Oberlee:

The Alaska Department of Environmental Conservation (DEC or department) has approved the Soil Treatment Technologies, LLC (STT) Thermal Treatment Operations Plan (Plan). The Plan outlines the design and operation of a Category D soil treatment facility and was prepared by STT and reviewed by DEC in accordance with 18 AAC 75.365 and 18 AAC 78.273, and the *Operation Requirements for Soil Treatment Facilities* (DEC, 2013).

Description of Operation

Soil Treatment Technologies, LLC will use thermal desorption to treat soil contaminated by petroleum and petroleum constituents generated by cleanup activities under 18 AAC 75 or 18 AAC 78 as a Category D soil treatment facility.

Terms The approval is subject to the following terms:

1. Proof of Financial Responsibility:

STT retains proof of financial responsibility and proof of pollution liability insurance in accordance with 18 AAC 75.365(a)(2)(A,B) and 18 AAC 78.273(a)(2)(A,B) and the satisfaction of the department.

2. Changes to the Approved Plan:

Substantive changes to the operation as described in Section 1.0 of the Plan may necessitate plan updates. Substantive changes can include items listed in 18 AAC 75.365(a)(1)(B) and 18 AAC 78.273(a)(1)(B), any changes in federal or state laws, regulation, or policy impacting operations of the facility, and any other changes that could substantively impact operations.

3. Inspections:

The department has the right to verify the ability of STT to carry out the provisions of this plan. The department has the right to enter and inspect the facility in a safe manner at any reasonable time for these purposes and to otherwise ensure compliance with the plan and the terms.

4. Compliance with Applicable Laws:

The facility must adhere to all applicable state statutes and regulations as they may be amended from time to time. This approval does not relieve the plan holder of the responsibility to secure other federal, state, or local approvals or permits in order to comply with all other applicable laws.

5. Failure to Perform:

If the owner or operator of an offsite or portable treatment facility fails to process soil to the department's satisfaction under the approved operations plan, the approval will be withdrawn, and that owner or operator may not accept, process, or receive contaminated soil.

If you have any questions, please contact me at 907-269-7691 or lisa.krebs-barsis@alaska.gov.

Sincerely,



Lisa Krebs-Barsis
Project Manager

cc: Bill O'Connell, DEC

Response to Comments
Operations Plan for Soil Treatment Technologies
Nikiski, Alaska
August 21 – September 4, 2021



Alaska Department of Environmental Conservation
Division of Spill Prevention and Response
Contaminated Sites Program

November 2021

Publication Information

This Response to Comments document will be sent by email or mail to commenters that provided contact information.

For 30 days following publication the Response to Comments document will be

- posted on the Alaska Department of Environmental Conservation website at:
<https://dec.alaska.gov/spar/csp/stt-thermal-soil-remediation/>
- available to review at the department's offices at 43335 Kalifornsky Beach Road, Soldotna, AK 99669 and 555 Cordova Street Anchorage, AK 99501

After 30 days the document will be available for review upon request at the contact below.

Contact Information

Lisa Krebs-Barsis
Contaminated Sites Program
555 Cordova St.
Anchorage, AK 99501
Phone: 907-269-7691
Email: lisa.krebs-barsis@alaska.gov

ADA Accessibility

The State of Alaska, Department of Environmental Conservation complies with Title II of the Americans with Disabilities Act of 1990. If you are a person with a disability who may need an accommodation in order to participate in this public process, please contact Brian Blessington at 907-269-7660 or TDD Relay Service 1-800-770-8973/TTY or dial 711 to ensure that any necessary accommodations can be provided.

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Attachments

- Attachment 1: Public Notices
- Attachment 2: Attachments Received by Comment
- Attachment 3: Petition
- Attachment 4: Alaska Community Action on Toxics Letter

Introduction

This Response to Comments provides the Alaska Department of Environmental Conservation (DEC) Contaminated Sites Program's reply to public comments received on the Soil Treatment Technologies, LLC (STT) Operations Plan.

The DEC would like to thank the public for their time and consideration in commenting on the Operations Plan.

The Contaminated Sites Program has authority to approve an operations plan for an offsite or portable treatment facility for the remediation of contaminated soil if the operations described in the plan are protective of human health, safety, and welfare, and of the environment.

The DEC Contaminated Sites Program's regulatory authority to review and approve offsite or portable treatment facilities is found in 18 AAC 75.365 and 18 AAC 78.273 and the *Operation Requirements for Soil Treatment Facilities* (DEC 2013) guidance, adopted by regulation.

<https://dec.alaska.gov/media/11991/operation-requirements-for-soil-treatment-facilities-march-15-2013.pdf>

In accordance with the *Operation Requirements for Soil Treatment Facilities* (DEC 2013), a public participation process is required for these facilities, involving a three-day publication of a Soil Treatment Facility Operations Plan Notice in a local newspaper and a two-week public comment period following the last date of publication.

DEC Public Involvement Actions

A public notice was published in the Peninsula Clarion, the local newspaper, for three days. After the third day a public notice was posted on the DEC website for the duration of the Public Comment period. A copy of the public notice posted in the Peninsula Clarion and on the DEC website can be found in Attachment 1. The public notice on the DEC website linked to a webpage that hosts the full Operations Plan and other relevant documents available for review. The full Operations Plan was available for review during business hours at the DEC offices in Anchorage and Soldotna. The public was informed that comments could be submitted to the DEC through the website, in person, or by email, phone, fax, or mail.

Table 1- Public Involvement and Operations Plan Approval Timeline

DEC notifies STT that the Operations Plan is complete	August 16, 2021
Public Notice in Peninsula Clarion begins	August 18, 2021
End of Public Notice in Peninsula Clarion	August 20, 2021
Public Notice on DEC webpage and beginning of Public Comment period	August 21, 2021
End of Public Comment period	September 4, 2021
DEC conducts in-person facility inspection	September 16, 2021
DEC requests updates to the Operations Plan based on comments	September 28, 2021

Response to Comments

DEC received twenty-nine submittals from the public. Most comments were submitted through the website and three comments were received by email during the two-week public comment period.

All submittals, except as described below, are provided in this section as they were received by DEC. Individual comments are provided verbatim. Attachments submitted by commenters are provided in Attachment 2 and labelled to correspond with the correct comment. The DEC responses are shown in *italic font*.

One of the submittals, received by email, was a petition with 203 signatures. Because it was not clear that all the signatories on the petition understood that the petition would be posted on our website, DEC redacted the signatures, addresses, and phone numbers of the people that signed the petition. Names of the signatories are still visible on the petition. The petition is in Attachment 3.

Due to the large number of comments received and similarity between many comments, general comment categories and DEC responses have been included, when appropriate, to address multiple similar comments.

General Comment Categories and Responses

General Response: Air Emissions and Air Quality Permit

The Contaminated Sites Program received sixteen comments regarding air emissions and the Air Quality Permit. Consideration of air emissions and the Air Quality Permit is outside of the scope of the Operations Plan review conducted by the Division of Spill Prevention and Response in accordance with 18 AAC 75.365 and 18 AAC 78.273. Compliance with Air Quality requirements or permits is a condition of approval of operations plans.

<http://dec.alaska.gov/Applications/Air/airtoolsweb/Home/ViewAttachment/17005075/-H3najsAZIS0UzHRGBEe9w2>

General Response: Facility Location

The Contaminated Sites Program received nineteen comments about the facility's location in an area with residences, a bike path, and a school. Some comments proposed alternate locations. Commenters expressed concern that residents would be affected by the proximity of the facility because the facility would potentially impact drinking water, air quality, traffic, and noise. These concerns are addressed in other general responses. The proposed facility, located at 52520 Kenai Spur Highway in Nikiski, is property privately owned by STT. There is no regulatory basis for the Contaminated Sites Program to require the facility to move from its proposed location or deny approval of the Operations Plan due to use of adjacent and nearby properties.

General Response: Adequacy of Public Process

The Contaminated Sites Program received five comments that the department's overall public process was not adequate in when and how the public was notified and the amount of time provided for public comment and input. The public process for the Air Quality Permit is outside of the scope of the Contaminated Sites Program. The public process for the Operations Plan,

administered by the Contaminated Sites Program, is described in the Operation Requirements for Soil Treatment Facilities (DEC 2013) adopted by regulation. The Contaminated Sites Program followed the process and required STT to publish a public notice, approved by DEC, in the Peninsula Clarion, after which a public notice was posted on the DEC website and the public comment period was open for two weeks. The Contaminated Sites Program also created a webpage that included additional information about thermal desorption technology. A voluntary public meeting was held by STT, but this meeting was not part of the Contaminated Sites Program public process.

General Response: Site Background Assessment

The Contaminated Sites Program received three comments that the proposed site and some surrounding properties were already contaminated. The Contaminated Sites Program viewed department records and did not find any documentation of known contamination at 52520 Kenai Spur Highway. Regulations, 18 AAC 75.365(a)(4) and 18 AAC 78.273(a)(4), require the owner or operator of a treatment facility to provide an assessment of background contamination before start up of the facility. On August 24, 2021, STT provided to the department a Baseline Sampling Letter describing soil and groundwater samples collected for the assessment. Soil samples were analyzed for contaminants associated with petroleum contamination. None of the samples had concentrations that exceeded the department's most stringent cleanup levels. Groundwater samples were collected from the water supply well on site and a well on the 52660 Kenai Spur Highway to the east. No contaminants were detected in excess of the applicable cleanup levels.

General Response: Protection of Groundwater

The Contaminated Sites Program received fifteen comments expressing concern for the impact that the proposed operation could have on groundwater.

In response, STT revised their Operations Plan to increase the wastewater sampling frequency from one sample per year to a sample collected every 2,000 gallons of water processed. An increase in sampling frequency will allow for monitoring of the efficacy of the granular activated carbon treatment system.

In this area groundwater wells supply water for drinking and other uses. Regulations, 18 AAC 75.365(a)(1)(A)(3) and 18 AAC 78.273(a)(1)(A)(3), require identification of all wells (drinking water, water supply, monitoring wells) within 500 feet of the operation. Public comments indicated more wells than those originally identified in the Operations Plan were within 500 feet. In response, STT identified seven additional wells on parcels within 500 feet. . The well at the clammary remains the well nearest the facility.

Well logs in the vicinity indicate nearby wells are between 25 and 90 feet below ground surface. Groundwater flow direction on the subject site is believed to flow southwest. A background assessment, conducted by STT and required prior to operations, included sampling of the groundwater well on the facility property and a well on a neighboring property to the east (upgradient). Water samples were analyzed for petroleum compounds and constituents. All compounds analyzed were either not detected or were detected below the cleanup levels. The Operations Plan calls for annual sampling and reporting for the on-site water supply well. The onsite water supply well is near the closest offsite well (at the clammary). Annual reports will be reviewed by the Contaminated Sites Program to identify any changes from the baseline sampling

event. Changes in concentration of compounds in groundwater observed in the sampling activities could necessitate further investigation to ensure the facility's containment and other mitigation measures are adequate.

Bulk fuel will not be stored on the property and contaminated soil will be covered and contained protecting the groundwater from surface water runoff. Portable spill containment known as duck ponds will be used for equipment. The containment, required by regulation, was designed by an engineer, reviewed by a DEC engineer, and inspected for consistency by DEC personnel on September 16, 2021.

General Response: Noise

The Contaminated Sites Program received two comments regarding potential noise from the facility. STT has committed to monitoring decibel levels at the boundary of the property in the Operations Plan, however, threshold levels for noise and other noise considerations are outside of the scope of the Contaminated Sites Program's regulatory authority.

General Response: Traffic

The Contaminated Sites Program received six comments concerning traffic to and from the proposed facility. Consideration of traffic is outside of the scope of the Operations Plan and the Contaminated Sites Program's regulatory authority.

General Response: Operations Capacity

The Contaminated Sites Program received three comments that the stated capacity of the thermal treatment facility, 25 tons per hour, is increased from the operations originally described in the Air Permit. Greater than or equal to 5 tons per hour is the threshold capacity for requiring a Minor Permit for Air Quality Protection. The Minor Permit for Air Quality Protection does not limit STT to processing 5 tons per hour. The submitted Operations Plan is consistent with the approved Minor Permit for Air Quality Protection.

General Response: Dust

The Contaminated Sites Program received six comments concerning dust. STT has committed in the Operations Plan to enforcing a 5 mile per hour speed limit on their property, dispersing water as needed for dust control, and voluntarily shutting down operations if excessive dust is an issue. Dust is addressed in the Air Quality Permit in Condition 13, Section 4.

General Response: Hazardous Waste

Two commenters raised concerns that the proposed facility would accept hazardous waste. Hazardous waste is a specific term defined in the Resource Conservation and Recovery Act (RCRA) and the proposed facility will not be allowed to accept hazardous waste for treatment or disposal. Under state regulation, petroleum hydrocarbons and petroleum constituents are hazardous substances, but not classified as hazardous waste under RCRA. Though the proposed facility will accept soil contaminated with petroleum, most soil contaminated with petroleum is not considered hazardous waste. In Alaska, there are no hazardous waste treatment or disposal facilities. All RCRA hazardous waste that is generated for off-site disposal is shipped outside of Alaska. Before soil will be accepted at the proposed facility the contaminated soil generator will provide STT with information about the contaminated soil which includes a statement that the material is not RCRA hazardous waste. STT will revise their Operations Plan to include the waste profiling form used. STT cannot accept any contaminated soil unless a DEC project

manager has signed a Contaminated Media Transport Treatment and Disposal Form. This form references the spill or contaminated site and is signed by the DEC project manager assigned to that cleanup who is familiar with the source of the contaminated soil. The form can be found here: <https://dec.alaska.gov/media/12127/transport-treatment-disposal-approval-form-for-contaminated-media-fillable.pdf>

General Response: Soil Contaminated with Chlorinated Compounds

The Contaminated Sites Program received three comments concerning the acceptance of waste contaminated with chlorinated compounds at the proposed facility. The commenters expressed concern that treatment of soil contaminated with chlorinated compounds can generate other hazardous substances like dioxins and that soil contaminated with chlorinated compounds are hazardous wastes.

Soil contaminated with chlorinated compounds is not always designated RCRA hazardous waste. The Environmental Protection Agency (EPA) retains authority on RCRA hazardous waste in Alaska. DEC Division of Spill Prevention and Response personnel coordinate with the EPA during clean ups that could generate RCRA hazardous waste and approve transport of cleanup generated waste for disposal or treatment. There are no disposal or treatment facilities for hazardous waste in Alaska.

STT is not currently approved to accept waste containing chlorinated compounds. However when thermal treatment facilities do treat soil contaminated with chlorinated compounds in Alaska, DEC requires that the soil be sampled for dioxins both before and after treatment and any dioxin-contaminated material generated during the thermal treatment process must be disposed of at an appropriate facility.

The Operations Plan allows for testing to be conducted to assess the facility's potential to treat soil contaminated with chlorinated compounds. In order for treatment of chlorinated compounds to become a part of their regular operation, following testing and close coordination with the department, STT would have to update their Operations Plan and undergo another public review.

General Response: Drainage and Runoff

The Contaminated Sites Program received four comments concerning drainage and runoff at the proposed facility. Public comments received included a photograph of pooled surface water near the edge of the property, away from the equipment area.

The proposed facility is located in a former gravel pit that was previously excavated below the surrounding grade creating a raised vegetated berm around the facility. No surface runoff is expected from the facility property to adjacent properties.

The facility equipment is elevated above the rest of the property to prevent run on from entering the soil containment areas. The containment was designed by a Professional Engineer and reviewed by a DEC engineer in accordance with the Operation Requirements for Soil Treatment Facilities (DEC 2013).

In response to comments, DEC personnel conducted a site visit on September 16, 2021 following several days of rainfall and did not observe pooled water near the equipment or containment.

General Response: Post Treatment Sampling Adequacy

The Contaminated Sites Program received three comments that the frequency of field screening and sampling the treated soil is inadequate. The sampling frequency proposed is consistent with regulation, 18 AAC 78.605(b) and practices of other thermal treatment facilities in Alaska. STT is proposing to screen soil with a photo-ionization detector (PID) before collecting samples for laboratory analysis. Samples for laboratory analysis will be collected from locations exhibiting the highest PID results.

General Response: Odor

The Contaminated Sites Program received two comments regarding potential odor from the facility. STT has committed to monitoring volatile organic compounds on the boundaries of the property and covering contaminated soil in the shelter with a liner as needed to reduce odor, however consideration of odor is outside of the scope of the Contaminated Sites Program's regulatory authority.

Individual Comments and Responses

Comments are provided verbatim as received by DEC

Comment 1- Jim Roza

"This is another option you can take to protect the people of Nikiski, Alaska.

The LNG project in Nikiski, is now state owned (Alaska Gasline Development Corp (AGDC), since BP, ConocoPhillips, and ExxonMobile pulled out of the project in 2016.

in this residential area in Nikiski is not going to be a great place to put the dirt burner with all the issues. There is a spot on Heindermann Road. Walker is an independant, served as Alaskan governor from 2014-2018. He led the effort for the state takeover for the LNG project. The state owns the LNG project since around 2014. Now the state & the DEC are pushing this in our residential area. I question why. The parcel ID # is 01504055 is where the contaminated dirt site is that is already set up to burn dirt, with a gas line already in, the electric already there, & water. Sits on 40-50 acres of gravel bed.

The Kenai Soil & Water Conservation District raised concerns about the soil beneath this site. Barrels of contaminants are known to have been buried at the site. The organization asked for the EIS to include a remediation plan if the soil is contaminated.

This is the site that I showed Nathan from STT. He asked who he would have to lease the property from. So here is another alternative than bringing it here among houses."

Response: *On September 27, 2021, the department followed up with Kenai Soil & Water Conservation District (KSWCD) to determine if the comment reflected their position and if KSWCD had information regarding contamination at the subject property. A representative of KSWCD said that they did not have any information about contamination on the subject property and the comment did not reflect the position of KSWCD.*

Please see the following General Comment Categories and Responses, in the previous section, to

address other concerns described in the comment.

General Response: Facility Location

General Response: Site Background Assessment

Comment 2- Larry Opperman

3.2.2 Solid Waste Process Stream, paragraph 2

The paragraph starts by stating the soil will be heated to 600 degrees Fahrenheit. The permit application and final permit technical analysis report (TAR) states a temperature of 700 degrees Fahrenheit. Recommend STT provide clarification of this discrepancy.

3.5. Air Pollution Control Permitting and Equipment, paragraph 2

As mentioned above. Recommend clarification of temperature discrepancy compared to the permit application. 600 degrees vs 700 degrees in the permit.

4.7. Equipment Fuel Storage and Handling, paragraph 2

Recommend explanation of "Duck Pond" be placed into the operations plan. Persons unfamiliar with spill containment language may be confused with this term and concerned at the connotation. Recommend STT insert a picture of a Duck Pond be placed in the attachments to help explain this type of spill containment.

GENERAL COMMENTS

The page numbers are incorrect throughout the document. Starting at the beginning of the ops plan after page 7 of 43, the next page goes back to page 1 of 43. It also appears there are only 35 pages to the plan instead of 43 before going into the figures and attachments.

Recommend an addition to the operations plan.

In an effort to alleviate public anxiety over the operations of the soil remediation unit, recommend STT place a section in the plan to include the requirements as set forth in the August 3, 2021, Technical Analysis Report, Condition 21, Excess Emission and Permit Deviation Reports.

There are several grammatical errors in the plan but were of minor nature. Mentioned in the event STT wishes to find and correct them.

Response: *STT is revising the Operations Plan to address the temperature discrepancy (600°F versus 700°F) with the Air Quality Final Permit Technical Analysis Report and the page number errors.*

The Contaminated Sites Program did not request a revision of the Operations Plan to define "duck pond" or include the requirements of Condition 21 of the Technical Analysis Report (TAR). The term duck pond is the common name for a portable or collapsible spill containment and no comments were received that indicated the public was confused about the term. The requirements of Condition 21 of the TAR are outside of the scope of the Operations Plan.

Comment 3- Brian Zinck

This soil treatment facility would be best located in the heavy industrial area of Nikiski at Mile 22 of the Kenai Spur Highway. The proposal to permit it at Mile 27.5 Kenai Spur Highway in a residential neighborhood subjects locals to potential air, water and noise pollution.

Response: Please see the following General Comment Categories and Responses, in the previous section, to address other concerns described in the comment.

General Response: Facility Location

General Response: Air Emissions and Air Quality Permit

General Response: Protection of Groundwater

General Response: Noise

Comment 4- Christine Roza

My family & I have been living in this area for 33 years now. What my main concern is the water table. Due to the machine using so much water, they will be running it through a charcoal filter, then dumping it on the ground. They are supposed to be 100 feet from any well. The building on the facility is set on an angle, the way the aerial map shows. The air quality permit stated 5 tons an hour. Now they are up to 25 tons an hour of dirt to burn. There are 11 houses in this area that actually will be affected in the 500 foot radius from the site. The DEC has not even been to the site to look at it first hand. They would see a lot more than the aerial photo shows. The last groundwater study done in Nikiski was done in 2015 by Dowl. Also, you have a commercial clammy in the 500 foot radius, and the water direction is going right to it. We need studies for traffic, water quality, impact on resident's quality of life. The emissions from 5 tons of dirt burned to 25 tons of dirt burned will be significantly higher and more dangerous. We also worry about contaminates dropping on the ground going from the contaminated dirt storage building, to the burner. With the amount of wind, rain, and snow melt we get in this area, there will be a significant amount of run-off that will take any contaminated dirt or dust, right into the water table. On the air quality permit, it states that the DEC sees an issue but it is outside the scope of the permit (pg 23). The DEC is here to protect the peoples' well-being and health. This is about common sense, not zoning. If you are going to be burning 25 tons of dirt an hour, that is 2 1/2 dump trucks per hour, in a 10 hour day. 25 dump truck loads per day. That is a lot of traffic going by houses and areas that are commonly used by people. The wind blows north-south by the road, towards houses and the town of Nikiski. This dirt burner needs to be moved to an area where there are no residents. There are a few areas like that around here.

Response: The thermal treatment unit is on sealed asphalt and the feeder will be covered. The Operations Plan states that STT will conduct daily maintenance to remove any material that falls on the ground near the storage cell and feeder.

Please see the following General Comment Categories and Responses, in the previous section, to address other concerns described in the comment.

General Response: Facility Location

General Response: Air Emissions and Air Quality Permit

General Response: Protection of Groundwater

General Response: Operations Capacity

General Response: Dust

General Response: Drainage and Runoff

General Response: Traffic

Comment 5- Elizabeth McKee

I think this is a much needed project for the Kenai Peninsula. I question the location, as it is very close to residential land. I do not think the entire process was adequately presented to the community, or that

actual studies have been done for this particular project to mitigate an nuisances such as chemical dust, impurities leaching into well / groundwater. Adequate signage for slow and large trucks entering road. (people speed like crazy once past the Hall sawmill!!)

Response: Please see the following General Comment Categories and Responses, in the previous section, to address other concerns described in the comment.

General Response: Facility Location

General Response: Air Emissions and Air Quality Permit

General Response: Protection of Groundwater

General Response: Traffic

General Response: Dust

Comment 6- Nicole Darwin

I'm not sure how many of you that are reviewing these comments are aware of what we are currently facing throughout the world. What the reality of our current situation is. Currently we are in a worldwide war (a war of unconventional tactics)for freedom and liberty against others in high positions of power, with many financial resources, and high status positions all conspiring together to gain more power, wealth, and control. China (using the taliban) to gain access to copper plate and rare earth elements, Russia (working with China) now has completed a railway bridge into China, the globalists (mostly out of America and the UK), and corrupt corporations and government public servants greedy for gain and a seat at the global world domination table. Through out worldwide history every new thing that makes life easier and the world a bit smaller is used by communists, dictators, tyrants, and those greedy for power, status, control, and wealth. Some examples are the industrial revolution, the spread of the railway systems, the Bible being translated for all, weaponry advances revolution, technological/medical revolutions, information becoming widely available and easily accessible. Those last three are currently why the whole world is in a war for freedom and liberty everywhere. Why would I start by pointing this out when writing a public comment about a local issue regarding this TSS dirt burning facilities that a corporation is attempting to place its facilities all throughout my beautiful state of Alaska, you might ask? Those that we are fighting against believe in conquering through any means necessary, any means! Those we are fighting want totally domination and control over the whole world. This means they need us to be reliant on them for all resources. They want us to to beg for food, water, manufacturing supplies, money, and to seek permission of what can or cannot be done or said. Does this corporation have ties to enemies the whole world is attempting to fight off from taking away our freedoms and liberties or maybe an attempt to destroy our waterways, water tables, ecosystems, habitats, flora, fauna, wildlife, fish, subsistence resources, and our vulnerable community members (children, elderly and those with respiratory problems). Below you'll find what I've also posted and shared into communities chat groups message boards:

This has been posted on multiple community chat groups:

All right Nikiski family! This is very important!

Some "big" people are really looking into this TSS dirt burning facilities and our ecosystems environmental concerns that our public has regarding this facility. Problem is no one is giving their opinion or input. Signing the petition is good, but it's not enough.

Step one:

Join Nikiski 411

Step two:
Touch 50th anniversary picture

Step three:
Scroll past 2 pictures and in the forth paragraph down select public comment.

Conclusion and mission:

This is where the public can give it to them straight with no word limit, I'm told. Share with other areas in the Kenai peninsula borough district no matter what city.

Why, because the poisoning of our habitats, waterways, flora, fauna, spawning grounds, water tables, and natural resources for those that rely on subsistence resources to feed their families can not and should not even be allowed the possibility that something this toxic is anywhere near these things. The only place for this toxic facility is a cement jungle in a industrial zone far, far, far away from even the possibility that the wind might blow in the direction of any life or natural subsistence resources and drinking waters! Away from all animal life and people as well. I say NO!

Not ANYWHERE in Alaska. Send this toxic corporation out of our state, away, to where life has already been cemented over or destroyed already!

This has been my warning and request to our local borough district public. I hope like me those reviewing my comment have also been born and raised in Alaska or at the very least have grown to love the beauty and recreation of the outdoors of our unique and wonderful state. I've noticed recently that the word equity has made it into the language of our local legislative assemblies and committees that make decisions regarding the beautification of our communities and into our parks and recreation assemblies decision making in local legislative bodies. This is unsettling because equity means our state be the same as all other communities around the world and our country. I don't know about you, but as for me, I want Alaska to remain exceptionally beautiful and breathtaking and not equitable with any other communities or places in the world. I hope some of you will help find others to step up to help with our chores of self governance and oversight to help guard our state from the horrible things that would make us equitable and harm our resources that feed and clothe us. Like Afghanistan, Alaska also has huge untapped prospects of rare earth elements. That those seeking to control all supplies are trying to force this new "green" energy technologies on others for semiconductors and electric vehicles demands to skyrocket so they can profit off of this market. Alaska needs to be guarded against this and stop this from happening. The only thing green about the new "black" climate agreement agenda is the money going into the pockets of those seeking to remove all freedoms and liberties across the face of the earth. A zero CO2 emissions goal is unattainable and all life on the face of our planet would die if that goal could ever be reached. They would have to plug up all volcanic activity to reach that goal. Still think green energy goals are a good idea? No! They are nothing but a way to weaken infrastructures worldwide! Our enemies are not agreeing to comply with climate agenda farce because they know without fossil fuels they will be weak and unable to attain their goals to become a world power nation. Conservation of resources and climate agendas are two very different things and it is pure arrogance to think people, insignificant to planetary cycles of life, could effectively "save the planet." The ones pushing to try, are in fact, poisoning our planet's life giving resources so that they can control all. Why, because if you don't comply they will refuse to give you food, water, housing, medical care, work, and financial resources. Don't let these tyrannical wicked humans kill our beautiful state and life giving resources!

That is all. Thank you. God bless you and may His face shine upon you. Should you chose to join the battle, may God bless all your endeavors to be successful!

Nicole Darwin

Response: Comment acknowledged. Please see the following General Comment Categories and Responses, in the previous section, to address other concerns described in the comment.

General Response: Protection of Groundwater

Comment 7- Melissa Roza

The chlorinated hydrocarbons that is suppose to be released from this dirt burning are toxic for the environment. What if something doesn't get filtered properly or checked on properly? Even if this has the chance of being safe, what if someone does something wrong? People makes mistakes all the time and it could be a huge problem for all the residential area. All we want is for this to be moved. There is already an area down by where the L&G project was suppose to be that was already used for this exact thing. Nobody lives there and probably won't for a while. The purposed plan states in section 5.2.2 that "filtered lab results below ADEC cleanup levels will be discharged into the ground surface Atleast 100 feet away from any known drinking water wells or surface water bodies." Due to gravity and pressure I find this highly unlikely that it would stop the water from getting to anyones wells or any other body of water. Where they are wanting to place this plant (in a residential area) is ignorant. There is another place in nikiski where they have already done this and where nobody lives by. Where this facility can go and not hurt people. Are they going to be including and measuring all the emissions from the truck that are hauling the dirt back and forth as well? It seems like this is going to hurt us WAY more then help us.

Response: Please see the following General Comment Categories and Responses, in the previous section, to address other concerns described in the comment.

General Response: Facility Location

General Response: Air Emissions and Air Quality Permit

General Response: Protection of Groundwater

General Response: Traffic

General Response: Soil Contaminated with Chlorinated Compounds

Comment 8- Amy Kivi

I have been against this since I found out a few months back. There are plenty of other places in Nikiski where it is not this close to residential homes. We are not zoned out here, but putting this site close to people's homes is ridiculous! There is also a high school not far from the site and the bike path that is across the road is used constantly by kids and adults. This to me is a no Brainer! Please do not allow this to happen to my community.

Response: Please see the following General Comment Categories and Responses, in the previous section, to address other concerns described in the comment.

General Response: Facility Location

Comment 9- Tami Johnson

Thank you for the opportunity to comment on this subject. No opposition to the facility, just the location. The owners have been shown different locations, that are not close to residences and already have much of the work done for them, with regards to the construction involved. There needs to be more oversite into what the potential damage that will be done in this location. There have been comments detailing the specifics and attention should be paid to the concerns of the

community. Again, thank you.

Response: Please see the following General Comment Categories and Responses, in the previous section, to address other concerns described in the comment.

General Response: Facility Location

Comment 10- Rebecca Ward

We do not need a dirt burner in our little community. It needs to be move to a less lived in area. We the people needed to be informed sooner than we were.

Response: Please see the following General Comment Categories and Responses, in the previous section, to address other concerns described in the comment.

General Response: Facility Location

General Response: Adequacy of Public Process

Comment 11- Christine Roza

“This is another option you can take to protect the people of Nikiski, Alaska.

The LNG project in Nikiski, is now state owned (Alaska Gasline Development Corp (AGDC), since BP, ConocoPhillips, and ExxonMobile pulled out of the project in 2016.

in this residential area in Nikiski is not going to be a great place to put the dirt burner with all the issues. There is a spot on Heindermann Road. Walker is an independant, served as Alaskan governor from 2014-2018. He led the effort for the state takeover for the LNG project. The state owns the LNG project since around 2014. Now the state & the DEC are pushing this in our residential area. I question why. The parcel ID # is 01504055 is where the contaminated dirt site is that is already set up to burn dirt, with a gas line already in, the electric already there, & water. Sits on 40-50 acres of gravel bed.

The Kenai Soil & Water Conservation District raised concerns about the soil beneath this site. Barrels of contaminants are known to have been buried at the site. The organization asked for the EIS to include a remediation plan if the soil is contaminated.

This is the site that I showed Nathan from STT. He asked who he would have to lease the property from. So here is another alternative than bringing it here among houses.”

Response: On September 27, 2021, the department followed up with Kenai Soil & Water Conservation District (KSWCD) to determine if the comment reflected their position and if KSWCD had information regarding contamination at the subject property. A representative of KSWCD said that they did not have any information about contamination on the subject property and the comment did not reflect the position of KSWCD.

Please see the following General Comment Categories and Responses, in the previous section, to address other concerns described in the comment.

General Response: Facility Location

General Response: Site Background Assessment

Comment 12- Christine Roza

Info on petition sent out. Please see downloads below.

DEC Note: The full petition, submitted as Comment 27, contains 203 signatures and can be found in Attachment 3. DEC redacted signatures and phone numbers as it was not clear that signatories were aware that the petition would be posted on line. The names of the signatories are still visible on the petition.

Response: *The Operations Plan requires state approval. An Environmental Impact Statement is not required for approval of the Operations Plan. Operations Plan requirements are detailed in 18 AAC 75.365 and 18 AAC 78.273 and the Operation Requirements for Soil Treatment Facilities (DEC 2013) guidance adopted by regulation. (<https://dec.alaska.gov/spar/regulations>)*

Please see the following General Comment Categories and Responses, in the previous section, to address other concerns described in the comment.

General Response: Facility Location

General Response: Air Emissions and Air Quality Permit

General Response: Protection of Groundwater

Comment 13- Tom Carew

I am against this for a lot of reasons.

Operations plan states waste water being utilized in other operations involving contaminated products will be cleansed using a charcoal filter system and then sprayed over the surrounding area and allowed to dissipate. That means letting any contamination still there will be allowed to soak into our water systems. There is no mention of dust monitors in the plan. These systems build up dust every time they are utilized, even enclosed. Expect a release because it's going to happen. Where is the plan to clean up after the trucks who spread contamination on roads, bike paths, etc. According to dec air quality monitors are not needed below 5 ton per hr. Operations plan states 25 ton per hour with no mention of air quality monitors. Thank you.

Response: *Trucking to and from the facility is outside of the scope of the Operations Plan. However, in accordance with 18 AAC 60.015, loads of contaminated soil must be covered.*

Please see the following General Comment Categories and Responses, in the previous section, to address other concerns described in the comment.

General Response: Air Emissions and Air Quality Permit

General Response: Protection of Groundwater

General Response: Dust

General Response: Operations Capacity

Comment 14- Len Niesen

Facility Issues

The Quonset hut as used in the operations plan should be fully enclosed all the way around,

and the floor should be sealed to the walls and drained to a sealed containment area in order to prevent escapement of contaminated dust and water. The structure as-is, which doesn't meet the description in the operations plan, is inadequate.

From the Q&A at https://dec.alaska.gov/spar/csp/stt-thermal-soilremediation/?fbclid=IwAR1B4MrZQWVvGz5StGaOWprlctj--GS34Lk6XbJQ_oGs63m2j8l7hcTo5GM

"Petroleum-contaminated soil will be delivered to the facility and placed into a staging area with a petroleum-resistant surface **inside a covered storage building....Inside the storage building**, the soil will be screened to remove all rocks and material over 2-inches in diameter....The screened soil will be stockpiled on a petroleum-resistant, sealed, asphalt pad in a covered, **enclosed**, containment area while awaiting treatment." (Emphasis added)

This "storage building" is not fully enclosed, and is not, in fact, a building at all. It is a hood, resting atop four shipping containers with gaps between them, open on both east and west ends and permeable on the sides as well. It is basically ONLY a roof. The building is in no way enclosed. With the high winds we have in Nikiski, there is no way the contaminated dust can be contained inside this structure.

The asphalt laid within the "Quonset" (roofed) area appears to be thin, regular asphalt (with sealant on it, assuming it is done as specified) with no discernable curbs or containment.

Allowing this facility to be defined as an "enclosed structure" indicates to me that the DEC is completely unaware and has not conducted a site visit. This structure should be fully enclosed.



Figure 1: STT "Quonset" hood

Dust

Dust generated from the screen plant, regardless of whether it is located outside or under the unenclosed hood, will be able to freely interact with the high winds we have in Nikiski. Mr. Oberlee indicated he would cover stored piles if the winds were high, but this frequently happens overnight and it is possible no one would be on site, even if simply covering the stockpiles were sufficient, which I doubt. This solution also doesn't account for winds during actual ongoing operations.

Noxious or Pungent Fumes

My research indicates we may expect an unpleasant odor associated with emissions from STT's soil decontamination unit. Per a white paper called "Odor-Treatment Technology for Recovered Hydrocarbons from Oily Waste in a Thermal-Desorption Unit," (by Jilei Fang, Xianghai Meng, Guoling Xu, Yong Yue, Peichao Cong, Chao Xiao, and Wenhui Guo, Yantai Jereh Oilfield Services Group), "the pungent odor is caused by the presence of sulfur and nitrogen compounds." STT, LLC has an allowance of sulfur and nitrogen emissions, which supports the concern that pungent/noxious odors will result from STT's operation.

The DEC's responsibility (per Alaska Code 18 AAC 50.110) includes assurance that "enjoyment of life or property" are preserved. The STT facility is on the main road between my property and Kenai, and will affect me if it emits pungent chemical fumes. Those who live in the area surrounding the plant are very concerned about their continued enjoyment of life and property, to the point where some are considering moving away. This is wrong, and if the DEC allows it, you are shirking your lawful duty.

The operations plan states that emissions will be monitored in accordance with the permit. I assume DEC similarly monitors the Nikiski Marathon Refinery. This refinery regularly emits noxious chemical odors and impacts Nikiski residents negatively. The "assurance" that DEC will be monitoring emissions (from a distance), is therefore no consolation.

Alaska Code 18 AAC 50.110 prohibits any emission which ... would unreasonably interfere with the enjoyment of life or property. Mr. Oberlee acknowledged to me that noise pollution will be a factor, especially from the screening plant. My research indicates that rock screening can exceed 95dB, which would be a hazard for workers and nearby neighbors and a nuisance to road traffic. While not an "emission" that has been addressed in this permitting action thus far, the EPA does consider noise pollution to be an intrusive emission (Ref. Noise Pollution and Abatement Act of 1972, a US statute regulating noise pollution with the intent of protecting human health and minimizing annoyance of noise to the general public). This would have likely been part of an environmental impact assessment, had one been conducted in this case. The EPA delegates responsibility concerning noise pollution to state and local governments, and the DEC should be addressing this.

Groundwater

The STT site is in a hole. It used to be a gravel pit and was mined down to a point probably 20-25 feet below the surrounding ground level. Water tends to collect in this hole after rains. (Photo is attached that was taken in one area of the site after a one-day rain.) The Operations Plan indicates that the water table was encountered at 61.9 feet below ground level. The reason the well is so shallow is that the top of the well is at the bottom of a deep pit. This means the facility site is unusually close, vertically, to the water table. Contaminants will be sprayed and water will collect in the hole, and there isn't a good way to control where the water goes even if it is sprayed under the open hood (which STT calls a "Quonset hut,") where the asphalt has no discernable raised edge or curb. The Operations plan claims that after pressure-spraying contaminated soil, this water will be directed by a shallow "swale" and captured in a 4x4' containment cell (too small for the volume of water required for this pressure washing.) It isn't clear how such a shallow "swale" would contain water in an area that isn't enclosed, and it is nearly unbelievable that the high-pressure water could be contained



Figure 2: Standing Water at STT Site

in such an open area. To make matters worse, the operations plan states that the ground is sloped heavily away from the hooded area, which means escaped contaminated water from pressure-washing will drain out into the site.

In Section 5, it is indicated that the water collected in the 250-gallon tank will be run through GAC in a barrel and then tested once near the start of the season. After that, subsequent water discharged will not be tested? We are expected to trust employees' visual examination? And visual observation will determine whether the GAC is still working? The hole into which the polluted water will be discharged is even closer to the water table than the bottom of the hole in which the facility rests. Before discharge, water should be lab-tested continually throughout the summer, and the GAC should be replaced when pollutant limits trend upward, not after visual observation is enough to show it has already failed. The water should also be tested for TCE/PCE and their byproducts if the plant is permitted to process soils with these substances.

Section 2.5 discusses soil treatment, and indicates that material over 2" in diameter will be screened, washed, and then stored with already-treated soil. It does not discuss organic material such as wood that is petroleum- or chemical-soaked and is mixed with these oversized pieces. Since petroleum will not wash off such wood or organic material (and possibly not off rocks either), it will remain contaminated but mixed with decontaminated material and disposed as though it is clean. If pressure-washing were adequate to clean petroleum products from such materials, we would not need a soil burner.

The plan states that the soil at the facility will be tested before work begins, and will not be tested again until the facility closes. If STT has a five-year permit, and they close in five years, they will be able to pollute the soils (and therefore, the groundwater) for five years before you

are aware. If you renew their permit and they continue for ten years, then you won't know for ten years that they are polluting the soils? If this stipulation is as it sounds, it is irresponsible.

Traffic

Local area traffic impact is not addressed in the operating plan, but should be addressed.

The amount of soil projected to be decontaminated per year by STT, LLC is 10,000 tons. This amount will result in over 700 trucks going two directions (filled, to the TDU, then empty, back to the dock for refill). Because of their intention to receive contaminated soil via the OSK Dock rather than the Rig Tenders Dock, these 700 trucks will drive directly past the Nikiski Middle-High School and into the center of the community where the fire station, gas station, grocery store and post office are located. This is 1400+ truck trips in the "non-frozen" months, which I assume are approximately May-September, five months. This amounts to a significant increase in traffic through this community, which will result in congestion and safety issues, particularly by the school but also elsewhere. Mr. Oberlee, at my suggestion, agreed that he will consider alternate truck schedules to accommodate school opening and closing. While this will help, if he indeed implements it (there is no commitment and it isn't mentioned in the Operations Plan), I don't believe it will be sufficient to address the enormous increase in traffic in the vital center of our community and residents will be negatively impacted.

Operating Hours

There is no commitment concerning operating hours mentioned in the Operations Plan. I asked Mr. Oberlee if 24/7 operation was out of the question and he wouldn't commit to that, stating that he would take into consideration noise generated from the plant, traffic patterns and project workload, but that the permit doesn't restrict his operating hours.

Given that noise (at the very least) will be a factor for residents, I ask that you restrict STT's daily operating hours. This would not be the case if they had not located in a residential area, but since that is the case there does need to be some restriction in place.

Permit Limits

If the plant operates at its limit, 25 tons per hour, and runs 60 hours per week (still a question) for 20 weeks per year (5 months), it can process 30,000 tons of contaminated soil. This amount goes far beyond the minor permit. While emissions might dictate certain limitations, Mr. Oberlee has stated that he may run at 25 tons per hour.

Neither the operations plan nor the permit covers the procedure if STT goes over their allowance. Will DEC know when they exceed? Will they be granted a waiver if they exceed?

Firm limits should be placed on this facility, especially given the fact that it is located in a residential area and completely surrounded by homes and businesses.

DEC meeting with Ben Carpenter

Meeting minutes were published from a meeting between Ben Carpenter and members of the DEC staff, including Lisa Krebs-Barsis, Jim Plosay, Jason Olds, and Stephanie Buss. It was clear from this meeting that the DEC is fully supportive of STT's plant in Nikiski. Ms. Krebs-Barsis even indicated how beneficial the plant will be "for the community." (What community? The oilfield

community? STT is designed to handle large quantities of petroleum-contaminated soil, not your average homeowner's truckload or two from a leaky oil tank. From all appearances, they will be receiving their contaminated soil from the OSK dock area, not from Nikiski proper.)

In the meeting, the DEC employees were almost "selling" the STT plant to Mr. Carpenter, advocating for it as though they have a stake in it. I see this as bias on the part of the DEC. It seems as if the decision is already made, and possibly was made before the first public comment session.

Further, the meeting minutes stated: "Staff explained that the facility is prohibited from remediating hazardous waste or PFAS contaminated soil." This is untrue. PCE/TCE are classified as hazardous material, and STT has DEC allowance to treat these materials. STT should not be permitted to treat these hazardous materials, as the DEC committed to Mr. Carpenter in their discussion.

I would like to see the prior damage from the oilfield community remediated, but, frankly, Mr. Oberlee and his partners chose a poor location for their facility, and the DEC is enabling this without concern for Nikiski's residents. In fact, it is my understanding from Mr. Oberlee that the DEC is partially responsible for this debacle, as their rules required the site to be found before the permit could be applied for, and months before a public comment was open – a scenario that begs for problems in a community. I hope the DEC has reconsidered this requirement.

If the facility were located in an industrial area – and there are many in Nikiski – I think Nikiski would have welcomed STT to locate here. The facility should be relocated to an industrial area.

Response: *In response to the comment, the Operations Plan will be revised to replace the word "enclosed" with "covered."*

The containment was designed by an engineer and reviewed by a DEC engineer in accordance with the Operation Requirements for Soil Treatment Facilities (DEC 2013). Required design elements can be found in the guidance but include asphalt thickness, sealant, and waste water capacity. The contaminated soil containment is elevated above the surrounding gravel pit, it is graded and has a sump to adequately prevent run on of water and contain stormwater that enters the covered facility and wastewater generated by washing. The facility is required to operate in accordance with the design capacity of the water containment.

Details about hours of operation and facility staffing are outside of the scope of the Contaminated Sites Program's regulatory authority. The facility is expected to have adequate staff to comply with their Operations Plan.

Regulation requires that a closure assessment be conducted at the end of the life of the facility. During the facility's operation, areas that would be included in the closure assessment will be covered by equipment and the containment. DEC will not request more frequent soil sampling of the base of the facility site until closure, unless a spill occurs, or previously unknown contamination is discovered or there is other evidence that additional sampling of the facility site is needed.

The Contaminated Sites Program is basing decisions about the Operations Plan on the

regulatory authority of the Contaminated Sites Program and the Operations Plan compliance with applicable regulations and guidance. The potential clients of the facility are not a consideration in the Operations Plan approval process. The proposed facility may serve any clients seeking treatment of petroleum contaminated soil. Potential clients for STT include the oil and gas industry as well as local tribes, governments, commercial entities, and residents.

Please see the following General Comment Categories and Responses, in the previous section, to address other concerns described in the comment.

General Response: Dust

General Response: Odor

General Response: Air Emissions and Air Quality Permit

General Response: Protection of Groundwater

General Response: Site Background Assessment

General Response: Drainage and Runoff

General Response: Traffic

General Response: Hazardous Waste

General Response: Soil Contaminated with Chlorinated Compounds

General Response: Adequacy of Public Process

Comment 15- Kaci Gillham

Hello,

I am very concerned about soil, water and air contamination by the proposed facility. It is too close to homes, the school and the highway. I own property in Nikiski and plan to build a home there, with children who will be at that school, traveling the highway and drinking the water.

As I understand there are alternative locations available to use that are not near homes, school and the highway and are better set up. Yes, using these will cost us more in transport but it is worth it to keep our air, soil and water in its current condition.

Please think of our children.

Thank you,

Kaci

Response: *Please see the following General Comment Categories and Responses, in the previous section, to address other concerns described in the comment.*

General Response: Facility Location

General Response: Air Emissions and Air Quality Permit

General Response: Protection of Groundwater

Comment 16- Henry Haney

Soil Treatment Technologies, LLC Nikiski, Alaska Operations Plan

6.0 ANNUAL REPORTING

STT will provide an annual report documenting inspections and maintenance of the pad and water treatment discharge results. The annual well sampling results will be included in the report. The report will document the results and findings of the annual groundwater sampling collected from the wells on the property. The annual reports will be submitted no later than the end of February of the following year.

I would propose the following be added to 6.0 ANNUAL REPORTING section

During the first season of operation there is to be a "mid-season" full site inspection conducted per the protocols listed in the 6.0 ANNUAL REPORTING Section. Testing would be conducted after no less than four and no more than six weeks of operation. This mid-season report would be submitted no later than August 31 of the first season of operation.

The purpose of this mid-season testing, and report would be as follows:

1. To verify operations are taking place per the work plan.
2. To confirm the work plan is creating a non-polluting operation per Engineering expectations.
3. To create a public awareness of operations compliance and reduce public concern about pollution by proving that the operations are complying, are not polluting, the operation is abiding with DEC regulations, and following their Work Plan as written.

Response: In response STT increased the wastewater sampling frequency to collect a sample every 2,000 gallons. Descriptions of reporting requirements for the increased sampling frequency will be updated. Annual reports and other compliance documents are public records and available to the public upon request.

Comment 17- Nicole Darwin

The fact this corporate entity along with DEC tried to cut environmental studies corners and strategically placed this toxic facility build hidden in plain sight back in May 2021, without posting a sign prior to starting this build shows me they do not care about poisoning our water and subsistence resources. It would appear that, that is the ultimate goal. Poison the land to push people into the cities or out altogether. The fact that DEC let Tesoro refinery now owned by Marathon in conjunction with Harvest Alaska, which has Chinese communist party ties, to poison soils with raw sulfur and allowed this to put arsenic into some water wells is an atrocity! You think that because you already failed to protect our ecosystems, water, and subsistence resources we should just let you continue to poison them! No! The purpose of conservation is to heal and stop these atrocities to preserve and conserve our valuable survival resources! DEC, the public is done allowing you to profit off of poisoning our resources! We will go above you and fight to stop you from allowing this poisoning of our survival resources all across Alaska. We say NO to allowing this corporation to move in and destroy all of Alaska's ecosystems and survival resources!!

Response: Comment acknowledged

Comment 18- Bill Bookout

To Whom it May Concern:

As a Nikiski resident I am opposed to allowing this project to move forward without further prominent attempts to increase public awareness. The data and analysis submitted are not at all accurate in assessing the potential impact to residents, businesses and the school which are all in close proximity to the site. I also feel that the process has taken place without nearly enough opportunity for public input. Many, many people in Nikiski and the surrounding area are still not aware of the project and it seems that it is trying to be snuck through and intentionally kept very low key.

Please delay moving forward until the public has been informed of the exact purpose of the project, hazardous materials intended to be processed and possible impact on long term public health and

Nikiski residents. Start with a prominently placed announcement in the Clarion. If those behind the project are so confident in the report, why wouldn't a prominent announcement in public news papers be objected to?

Response: Please see the following General Comment Categories and Responses, in the previous section, to address other concerns described in the comment.

General Response: Facility Location

General Response: Adequacy of Public Process

Comment 19- James Roza

9/4/2021

1.0 Introduction

Is the company really going to be able to run this machine efficiently? They have never run this machine before; they just bought it. With all the issues and problems that we have been commenting on, I really worry about peoples' health, and the environment, and the safety issues.

2. The facility diagram in the operations plan does not show how many houses or wells that are really around the area of the property in question. There are not just two, like it shows, but 10 houses, 1 clammary, and 11 wells, one of which is food grade, in a 500' radius. The building is not set on an angle. Don Rappe's well next door, or the clammary's well, next door the other way, have not been tested. With the groundwater flow direction marked on this diagram, the groundwater and any contaminates in or around it would flow right into the clammary's well.

3. Post-Treatment sampling. There should be a liner underneath their facility. A liner should be under the machine, and another liner under the contaminants. I would say that the public has a right to see pictures of what has been done building this facility.

4. The building sets is actually straight, parallel to the property line. The set back is wrong. The building is not completely enclosed. This facility does not have any retaining walls. It has huge cement blocks, that weigh 4000 - 5000 lbs each. If they are stacked on the asphalt, it will break. The plan says the asphalt is 2" thick. To haul dumptrucks at around 39,000 lbs; and belly dumps at around 79,000 lbs; I don't think the 2" of asphalt is going to hold up. So with all the blocks and the seams, how are they going to seal this from all the rainwater, wash water, etc.?

Where they have drilled the well at the facility, there is water that sits in that whole area in the spring. It sits close to the clammary's well water aquifer. The DEC has not even come to look at the facility, or the neighborhood it is in. They are going off of aerial photos, which are old. Has the DEC even been here since they started this project? The drains, the compaction, the inches in asphalt, the start up to finish of this operation. Where are the photos? Where are the engineer's drawings?

5. Engineering plans. The community, and I, would like to see the engineering plans for this operation. There needs to be a second containment pit liner under the contamination building. There needs to be a pit liner underneath the dirt burner itself, for a second containment so nothing gets into the water table. The engineering plan says that this machine is under a cover. Is there actually going to be a pit liner under the material already burnt, when they stockpile it?

6. Site monitor procedures. When they come out with the 5 ton permit, it just had hydrocarbons. Now they need, on all 4 corners of the property, they need air and emission monitors and a camera on the exhaust, for the community to review. They also need monitoring wells on all 4 corners of the property, because they are dumping so much water in the area. They need to be monitored probably twice a week. There needs to be a chain-link fence around the facility to prevent kids and animals from getting in the area.

1.1 Site description: Don Rappe's place is NW from the facility. South is towards town. Someone

needs to take a yardage gun and a gps and measure all this stuff the right way, instead of guesstimating and using outdated aerial photos. There are 10 houses and 11 wells right by the facility. The facility itself is in a 22' - 30' deep hole. They show only 2 water wells only 500' by the facility. That is not correct.

2.0 Financial Responsibilities.

1.1 This facility should insure everything that is in the 500' perimeter boundary. They need an insurance policy to protect every person in this boundary, the houses, properties. The vehicular traffic. The pedestrians going by. All this should be insured, in case there is a breach in operations. Fire, health, safety, explosions. Fire or explosions due to the bag house. They should have coverage in case something does happen. They should also have an environmental impact insurance coverage for this area. Talking to Kathy at DEC, the bag units have a tendency to catch on fire or explode. Will our neighborhood be covered by insurance, from the company, for this?

3.0 Air pollution control systems.

They need air monitors, emission monitors, and dust control monitors.

3.1 Overview: Greater than 2" to be washed with power washer. How are you going to deal with any garbage, plastics, chunks of wood; that come into the site unawares?

3.2 Solid waste & process streams. Is the water from this just going to drip all over the ground? Is a pit liner going to be under the process stream?

3.2.1 Washing the material with the pressure washer: what happens to the material that you get, by mistake, that is soaked with contaminants? How can that be treated? What is your plan to take care of this stuff?

The water used to wash the contaminated stuff should be taken to injection wells that the oil companies own. Dust and vapors are going to be very bad in this 500' perimeter boundary, where people live.

3.2.4 The building's ends are both open. The water spray will be going in and out from the pressure washer, rain, wind. The catch basin is setting right where all the water comes down off the quanset hut, thus more contamination if it overfills. On the basin: it is set in the ground. What if the drains break from frost, earthquake, etc.? What happens when we get rain downpours like we do? Can you keep up with the overflow? What is your plan for that? The treatment water, infiltrating into the ground, 100' from the well. Anywhere you dump that in the yard, is only 60' from the well, not 100'. When they discharge this water, they plan to test it, but then they plan to look for oil sheens, and smell the odor, then use absorbant pads to catch the excess oil on the ground. This I find maddening. There is no way anybody is going to keep the water in the property boundaries (480,000 gallons of water).

3.2.3, 3.2.4 In this process of what they are talking about, the machine is only as good as its operators. In this operation, they speak of dust, vapors, noise, fumes, loaded trucks. What time are they going to be working? How many employees? Two shifts? How are the workers going to deal with the complicated sounding start up and shut down processes? Will they be too tired at the end of their shifts to deal with the procedures coheritantly? They say they are going to work 12 hours a day, 6 days a week. The foot traffic for that time period for the dumptrucks is going to be maddening. I worry about the family with the little kids playing in the front yards, within the 500' area of the processing plant. They will get hit with all the dust and odors from the dumptrucks alone. You look at the hours they want to run, and the days a week. It will be statewide, hauling dirt from all over Alaska. This is NOT an industrial area!

3.5 Air pollution control: When they started with the air permit, they said they were only going to do 5 tons an hour, and only hydrocarbons. Now its up to 25 tons an hour, along with hydrocarbons, doc's and other materials. What are we actually looking at for the emissions? That is why we need 4 monitors set up around the site, to protect the people. I think all this stuff here needs to be considered for this residential area. It's not about zoning, its about common sense. I also think there

needs to be another party to do all the monitoring so STT can be held accountable for mistakes.

4.4.1 I would like to have public comment on all the pictures that the professional engineer has done on this site.

4.4.3 This is what is scary: at 230 miles away from Anchorage, DEC has yet to come down to look at the property and situation. The DEC needs to be on the project from start to finish.

4.5.2 Cover. Is there going to be there 24/7 to watch the tarps, etc. when we have bad rain, wind storms, etc.? On the general maintenance, they really need to enforce the monitors 24/7. This way if they are gone, the emissions or whatever are being watched.

4.8 Ground water monitoring. Instead of testing peoples' wells, they need to have four monitoring wells on each corner of the property. They should test the said wells every two weeks. They are dropping 480,000 gallons of water on the surface.

Samples: the number of soil samples needs to be a lot more than the company plans to do, considering how much soil is going to be burned. Its' in a residential area. This company, and the DEC, need to go up and above what they are currently doing for this. One small sample for 10 yards of dirt? Are you kidding me???

The company would not have to do all this stuff in an industrial area.

I am going to say it again. This gravel pit is all used up. The 20-30' difference in the elevation, for a water buffer, is way too close. When you actually dump that much water in an area where it is 60' from the water table, it is way too close to discharge the water on the surface.

Also why are they using cheap filters? They need to buy the good ones instead of going cheaper.

This operation is going to affect everyone around here. It really needs to be looked at a lot better; even reconsidered.

Response: *This comment detailed numerous concerns. Many of these are addressed in the general responses.*

Details about hours of operation and facility staffing are outside of the scope of the Operations Plan. The facility is expected to have adequate staff to comply with their Operations Plan.

The proposed facility is not approved to accept solid waste that is not contaminated soil.

Garbage or debris should be removed before the material is transported to the facility.

Incidental garbage and debris, mixed in with the soil waste, will be removed and disposed at an appropriate disposal facility by STT. The waste profiling form has been added to the Operations Plan.

The Engineering Plan is Attachment 1 of the Operations Plan. STT is updating the Engineering Plan and it will be stamped by a registered professional engineer. As-built diagrams of the facility, stamped by a registered professional engineer, will also be submitted when construction is complete.

There will be containment under the entire treatment system and post treatment stockpiles except the feed hopper loading ramp which will be maintained daily. The containment was designed by an engineer and reviewed by a DEC engineer in accordance with the Operation Requirements for Soil Treatment Facilities (DEC 2013). Required design elements can be found in the guidance and include asphalt thickness, sealant, and waste water capacity. The contaminated soil containment is elevated above the surrounding gravel pit, it is graded and has a sump to adequately prevent run on of water and contain stormwater that enters the covered facility and

wastewater generated by washing. The facility is required to operate in accordance with the design capacity of the water containment.

Much of the Kenai Spur Highway runs north-south, but portion of the Kenai Spur Highway adjacent to the STT property is east-west. The directions identified on the aerial photograph are correct.

In addition to the financial assurance required to cover the cost of treating contaminated soil if the facility shut down, the facility is also required to carry pollution liability insurance and has a pollution insurance policy in place.

DEC personnel conducted a site visit September 16, 2021 to observe the layout of the property. The DEC site visit confirmed that the facility's position in the Operations Plan was not shown correctly. STT is updating Figure 2 in the Operations Plan to show the correct position of the facility structures. DEC personnel observed site topography and the containment area during the site visit and found both to be consistent with drainage described in the Operations Plan.

Please see the following General Comment Categories and Responses, in the previous section, to address other concerns described in the comment.

General Response: Facility Location

General Response: Air Emissions and Air Quality Permit

General Response: Protection of Groundwater

General Response: Dust

General Response: Noise

General Response: Odor

General Response: Operations Capacity

General Response: Traffic

General Response: Drainage and Runoff

General Response: Post Treatment Sampling Adequacy

Comment 20- Christine Roza

See uploaded file first please.

9/ 4/ 2021

This burn site has not been put in the public's awareness enough. There were no public comments at the beginning of this. The public never knew about this.

On the concerns, there are 10 houses and 11 wells in this area, one well being for a commercial, food-grade business in the summer. That business sits around 150' higher than the dirt burner property, right next door, on the back right-hand corner of the property. Rep. Ben Carpenters' house is a mile away from the burn site.

We do not have water contamination problems outside of the red-zone in Nikiski. No problems by the burn site. The red zone is behind the high school, to the inlet, and by Wic Road to the inlet; and up to Merrill McGahan's airstrip.

Nobody in the DEC has been out to Nikiski to look at this site yet. They are going off aerial photos, of which we do not know how old they are. By the aerial photos they are looking at, north, south, east, & west are all marked in the wrong direction.

I asked these people about the "other sites". In the plans for the "other sites", do they have 10

houses/families living around them? Have they considered the quality of life & human health; all the interactions of people in our community, around this site? Are they willing to put an umbrella insurance policy to protect everybody in this area? At least 500' around the perimeter boundary? What about the people who are walking or driving by? What IS the insurance policy that STT has for this operation? Is the DEC, the Kenai Peninsula Borough, and the state of Alaska going to be on this policy also? Their actions are uncalled for. They are turning a blind eye to the concerns the people have. What will the repercussions be if there is a catastrophic failure? DEC should NOT come up with a waiver for this company, with all the air quality comments, the petitions, the radio announcements, and the borough assembly meetings. I think we would have had a lot more comments if the original first public announcement would have been put out a lot more, rather than just a news paper, of which not everybody reads! It really should have been mailed to everybody in this area.

The testing will be very very small for the amount of material being tested. The tests are too far and few in between also. There should be testing of the material at least every month. Not at the beginning and end of the whole process. What if there is a problem a month or two out? How would you know of the problem or the scope of it? It could keep getting worse. The engineered containment - how will it actually prevent secondary contamination from water? Is a charcoal filter actually going to work as well as you think? Who is going to oversee the charcoal filtering system? Also, there really should be monitoring wells on every corner of the property.

To Rep. Ben Carpenter: How did you actually know that this was a "done deal" by the 16th of July? Also, this needs to be monitored a lot better - it's gonna be too late if there is illicit activity, or a breach of any kind, at this burn site. Air and water quality could be ruined by the time the problem was seen or figured out.

Where they are putting this facility for dirt burning is already jeopardized by removing 35' of soil and clay, which could have buffered any contaminants.

As for the advantage this facility provides the community: HOW? You are NOT looking at the homes and residents! There is a more suited place to do this!

Response:

This public comment included an email from the DEC to Representative Ben Carpenter dated July 21, 2021. The email was a follow up to a meeting held with Representative Carpenter on July 21, 2021. The email can be found in Attachment 2 of this document.

This comment detailed numerous concerns. Many of these are addressed in the general responses.

DEC personnel conducted a site visit September 16, 2021 to observe the layout of the property and verify information provided in some of the public comments. As a result of the site visit STT will update the position of the facility on the figure in the Operations Plan. At the time of the site visit, the construction of the facility was otherwise consistent with the Operations Plan. Much of the Kenai Spur Highway runs north-south, but portion of the Kenai Spur Highway adjacent to the STT property is east-west. The directions identified on the aerial photograph are correct.

In addition to the financial assurance required to cover the cost of treating contaminated soil if the facility shut down, the facility is also required to carry pollution liability insurance and has a pollution insurance policy in place.

Please see the following General Comment Categories and Responses, in the previous section, to address other concerns described in the comment.

General Response: Facility Location

General Response: Air Emissions and Air Quality Permit

General Response: Protection of Groundwater

General Response: Post Treatment Sampling Adequacy

General Response: Adequacy of Public Process

Comment 21- James Roza

Please go to the EPA website, and look at Sulfur Dioxide (SO₂) Pollution

Response: *Please see the following General Comment Categories and Responses, in the previous section, to address other concerns described in the comment.*

General Response: Air Emissions and Air Quality Permit

Comment 22- Deanna Roza

I think that this facility should be at least moved. I am not against anyone burning dirt but this is in a rural area. There are homes nearby and all of this dirt burning will contaminate our air supply. It could ruin our water supply as well. At least move it somewhere else AWAY from all the homes around here!

Response: *Please see the following General Comment Categories and Responses, in the previous section, to address other concerns described in the comment.*

General Response: Facility Location

General Response: Air Emissions and Air Quality Permit

General Response: Protection of Groundwater

Comment 23- Christina Parnell

I'm really worried about the air and water pollution in a condensed residential neighborhood. There has to be a better location for this facility.

Response: *Please see the following General Comment Categories and Responses, in the previous section, to address other concerns described in the comment.*

General Response: Facility Location

General Response: Air Emissions and Air Quality Permit

General Response: Protection of Groundwater

Comment 24- Tracie Longan

My husband worked 30 years in the oil field putting the stuff in the ground that they will be burning and he knows exactly how hazardous this material is this is something we don't want near our home we don't want to be at risk breathing something that can cause cancer or something worse cause some of the acids that are used will eat through your bone there is no way to fully contain the dirt from falling off the trucks going right past our house and even with a cover over the top dust is still going to be blowing everywhere and I'm also very much concerned about our water well and how it

could be affected I don't understand why you would pick a residential area to put something so dangerous there are way more suitable places to put this that not putting people's lives at stake so we're totally against this place being put right across the road from our house

Response: Please see the following General Comment Categories and Responses, in the previous section, to address other concerns described in the comment.

General Response: Facility Location

General Response: Dust

General Response: Traffic

Comment 25- Tracie Longan

This comment is the same as Comment 24 and appears to have been submitted by the same commenter twice.

Comment 26- Jack Stolz

BLUF this facility needs to be in a industrial area, not a residential area. Zoning or not you take one look and anyone can see that this is the wrong area. Move the facility to the industrial area of Nikiski near Marathon/Agrium. I spent too much time around these facilities on deployment to Iraq and Afghanistan, I can tell you from experience that you don't want to be around it.

Response: Please see the following General Comment Categories and Responses, in the previous section, to address other concerns described in the comment.

General Response: Facility Location

Comment 27- Steven Chamberlain

I have D.E.C. file photos of 55 gallon drums of toxic liquid laying on their side actively spilling the contents (intentionally) onto the ground. The photos were taken by D.E.C. employees. The photos prove that D.E.C. employees kicked or pushed the barrels over, then took pictures of the crime they had just committed.

This is just one example of the criminal nature of the Alaska Department of Environmental Conservation. I have proof of dozens of similar crimes committed by D.E.C. employees that were appointed by Frank Murkowski, Ted Stevens and Don Young and others. These appointees were clearly willing to do anything for a paycheck and a pretty pension.

The current D.E.C. employees are just as criminal as the ones from the past and their paychecks and pensions are bigger and more inviting to these criminals and the cabal they work for. It's not stupidity or ignorance that drives them. It is pure evil and greed fed by criminals like Frank, Ted and Don.

Just so everyone knows, several of the properties surrounding this proposed site are contaminated at the surface and in the ground water. I could tee up a ball on top STT's soil burner and hit a driver and pitching wedge to at least four different unknown contaminated sites. All of the parties involved in making this insane idea a reality know this. They don't want anyone to know this so that they can blame any future contamination issues on the "Dead Neighbors" from the past.

I'm not going to mention any names out of respect for the dead, but in the last three years at least seven people have died from cancer who lived within 300 yards of this site. Several more have been battling horrible unknown illnesses. A couple of them I know moved out of state and may need to be added to the death toll.

This site has clearly been chosen because it is already contaminated. STT will blame any

contamination on the sawmill, the sawmill will blame it on the old diesel shop across the street, the diesel shop will blame it on John Stoltz's junkyard and in the end the D.E.C. will protect Big Oil and STT and blame it all on "Dead Men" Ain't that convenient!

Everything I say here is true and accurate. Investigate the surrounding properties. You will find toxic contamination in ALL directions. I gave you some good clues, feel free to contact me if need more information.

If you (D.E.C.) grant STT permission to do this without investigating what I have said I will work tirelessly to expose ALL of the criminals involved. You will lose your paycheck and pretty pension. You may even spend time in prison, but most of all you will burn in Hell for eternity.

Good Day Criminals!

Steven Chamberlain

(907)776-5540

Response: *There are no documented releases or contamination on 52520 Kenai Spur Highway or adjacent properties. Alaska state law requires all oil or hazardous substance releases to be reported to the department. Information on reporting releases can be found here:*

<https://dec.alaska.gov/spar/ppr/spill-information/reporting>.

Please see the following General Comment Categories and Responses, in the previous section, to address other concerns described in the comment.

General Response: Site Background Assessment

Comment 28- Petition submitted via email by Amy Kivi

DEC Note: The full petition contains 203 signatures and can be found in Attachment 3. DEC redacted signatures, phone numbers, and addresses as it was not clear that signatories were aware that the petition would be posted on line. The names of the signatories are still visible on the petition.

Response: *The Operations Plan requires state approval. An Environmental Impact Statement is not required for approval of the Operations Plan. Operations Plan requirements are detailed in 18 AAC 75.365 and 18 AAC 78.273 and the Operation Requirements for Soil Treatment Facilities (DEC 2013) guidance adopted by regulation. (<https://dec.alaska.gov/spar/regulations>)*

Please see the following General Comment Categories and Responses, in the previous section, to address other concerns described in the comment.

General Response: Facility Location

General Response: Air Emissions and Air Quality Permit

General Response: Protection of Groundwater

Comment 29- Letter submitted via email by the Alaska Community Action on Toxics, Pamela Miller

DEC Note: This comment, submitted as a letter by email can be found in Attachment 4. The comment discussed a number of issues that are mostly addressed by the general response

Response:

The STT Operations Plan identifies the requirements for acceptance of contaminated soil in the Section 4.1. The Operations Plan will be approved to only accept petroleum-contaminated soil as part of regular operations. Treatment of other contaminants as a regular operation could only occur after testing and revision of the Operations Plan.

Successfully treated soil where sampling has demonstrated that contaminant concentrations are below the most stringent cleanup levels can be sold or transported off site for unrestricted use.

STT will submit the post treatment sampling results to the DEC Contaminated Sites soil treatment facility project manager for review and determination that the soils are eligible for unrestricted use.

The retention time of the dryer is based on recommendations of the equipment manufacturer, percent moisture, soil type, and contaminant concentrations. If the retention time is not adequate the soil will not be successfully treated which would be revealed by the post treatment analyses. That soil would be returned to the unit and treated again. Retention times would need to be adjusted if post treatment analyses indicate that retention time is not adequate.

Consideration of potential for fires and explosions are outside of the scope of the Operations Plan. The facility is required to follow any applicable state or local fire codes.

Please see the following General Comment Categories and Responses, in the previous section, to address other concerns described in the comment.

General Response: Facility Location

General Response: Adequacy of Public Process

General Response: Air Emissions and Air Quality Permit

General Response: Protection of Groundwater

General Response: Drainage and Runoff

General Response: Hazardous Waste

General Response: Soil Contaminated with Chlorinated Compounds

General Response: Post Treatment Sampling Adequacy

Attachment 1: Public Notices

PUBLIC NOTICE
STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

An Operations Plan for an Offsite or Portable Treatment Facility for the remediation of contaminated soil has been submitted to the Department of Environmental Conservation (DEC) for approval in accordance with 18 AAC 75. 365 and 18 AAC 78.273. The plan details are as follows:

Applicant: Soil Treatment Technologies, LLC.
8361 Petersburg Street
Anchorage, AK 99507

Location: 52520 Kenai Spur Highway, Nikiski Alaska

Any person wishing to submit comments regarding this Operation Plan may do so electronically via our public notice site at <https://dec.alaska.gov/comment/>. If you are unable to submit comments via this site, you may submit them in writing to Lisa Krebs-Barsis, Department of Environmental Conservation, SPAR/CSP, 555 Cordova St., Anchorage, AK 99501, 907-269-7691 (phone), 907-269-7687 (fax), or lisa.krebs-barsis@alaska.gov. The full contents of all submitted comments are considered public records and will be posted online in full during the public comment period.

Comments submitted in writing directly to the Ms. Krebs-Barsis will be uploaded to the public comment site. It is preferable for commenters to submit directly through the public comment site.

The public comment period for this application begins on August 21, 2021 and ends at 11:59 p.m. on September 4, 2021. Comments must be received by 11:59 pm on September 4, 2021. It is the responsibility of the commenter to verify that facsimile and email submissions are received by the deadline.

Copies of the Operations Plan are available for public review at the following locations: the department's offices at 43335 Kalifornsky Beach Road, Soldotna, AK 99669; 555 Cordova Street Anchorage, AK 99501; and the department's website at <https://dec.alaska.gov/spar/csp/offsite-remediation>.

The State of Alaska, Department of Environmental Conservation complies with Title II of the Americans with Disabilities Act of 1990. If you are a person with a disability who may need an accommodation in order to participate in this public process, please contact Brian Blessington at 907-269-7660 or TDD Relay Service 1-800-770-8973/TTY or dial 711 to ensure that any necessary accommodations can be provided.

Attachment 2: Attachments Received by Comment

- Attachment for Comment 11- Christine Roza
- Attachment for Comment 12- Christine Roza
- Attachment for Comment 19- James Roza
- Attachment for Comment 20- Christine Roza

8/24/2021

8-24-21

This is another option you can take to protect the people of Nikiski, Alaska.

The LNG project in Nikiski, is now state owned (Alaska Gasline Development Corp (AGDC), since BP, ConocoPhillips, and ExxonMobile pulled out of the project in 2016.

In this residential area in Nikiski is not going to be a great place to put the dirt burner with all the issues. There is a spot on Heindermann Road. Walker is an independant, served as Alaskan governor from 2014-2018. He led the effort for the state takeover for the LNG project. The state owns the LNG project since around 2014. Now the state & the DEC are pushing this in our residential area. I question why. The parcel ID # is 01504055 is where the contaminated dirt site is that is already set up to burn dirt, with a gas line already in, the electric already there, & water. Sits on 40-50 acres of gravel bed.

Pix

The Kenai Soil & Water Conservation District raised concerns about the soil beneath this site. Barrels of contaminants are known to have been buried at the site. The organization asked for the EIS to include a remediation plan if the soil is contaminated.

This is the site that I showed Nathan from STT. He asked who he would have to lease the property from. So here is another alternative than bringing it here among houses.

I have emailed the above comment to:

C. Pierce

J Bjorkman

B Carpenter

Pamela@akaction.org

Krebs-barses

Natalie Travis

Bob@inketkeeper.org

dec commissioners
(Brune)
Peter Micciche



STT Soil Burning Remediation Plant re-location

Petition

The reason for this petition is to change the location of the proposed STT dirt burner site. The location chosen mile 27.4 is in close proximity to the high school, aquifers, residences, the Clamery and bike path. The STT dirt burner will put off gasses like SO₂ into the air which will contaminate water aquifers and water wells, SO₂ is not safe for humans, animals or plants. We believe a remote area in Nikiski is better suited for this site.

The STT dirt burner is allowed by the DEC to burn up to 5 tons an hour, and only keep a log book. They do not have to test the air. Because of the potential for creating health problems, water well problems, and wetland areas that drain into the Cook Inlet an environmental impact study need to be done. One is not scheduled as of yet.

The DEC has given the Kenai Peninsula Borough until September 3rd to come up with a solution to this problem or propose an alternate plan to move this dirt burning facility to a more suitable location. The DEC has only seen aerial photos and has not been to the site.

The bag unit they intend to use has a tendency to explode. The DEC is aware of this and says they have a pressure inspection in place. This should not be near residences!

Sulfur dioxide (SO₂) is a gaseous air pollutant composed of sulfur and oxygen. SO₂ forms when sulfur containing fuel such as coal, oil or diesel is burned. Sulfur dioxide also converts in the atmosphere to sulfates, a major part of fine particle pollution in the eastern US.

Sulfur dioxide causes a range of harmful effects on the lungs, as the EPA's most recent review of the science concluded:

- Wheezing, shortness of breath, chest tightness and other problems, especially during exercise or physical activity.
- Continued exposure at high levels increases respiratory symptoms and reduces the ability of the lungs to function.
- Short exposures to peak levels of SO₂ in the air can make it difficult for people with asthma to breathe when they are active outdoors.
- Rapid breathing during exercise helps SO₂ reach the lower respiratory tract, as does breathing through the mouth.
- Increased risk of hospital admissions or emergency room visits, especially among children, older adults and people with asthma.
- SO₂ can also harm trees and plants by damaging foliage and decreasing growth.
- SO₂ and other sulfur oxides can contribute to acid rain which can harm sensitive ecosystems.



FW: Rep. Carpenter re: Nikiski soil remediation facility

[REDACTED]
Date: 09/02/2021 12:38PM

To: "snowwizard@alaska.net" <snowwizard@alaska.net>
[REDACTED]

Subject: Rep. Carpenter re: Nikiski soil remediation facility

Good afternoon -

DEC program staff and Legislative Liaison Laura Achee met with Representative Ben Carpenter this morning to discuss a new soil thermal remediation facility in his district. While the location for the facility is not zoned as a residential area, there are residences within a mile of the site, so there have been constituent concerns. Rep. Carpenter's house is one of the nearby residences. There is a great deal of local concern that this facility will cause hazardous contamination to the air and ground water, in part due to past drinking water contamination in the area.

Jim Plosay and Jason Olds from the Air Quality Division and Stephanie Buss and Lisa Krebs-Barsis from the Contaminated Sites program provided information on the permitting/plan approval process and the safeguards that will be put in place to protect public health and the environment. The draft air emissions permit is out for public comment, and the approval of the operations plan is still in process. Staff discussed the expected plant operations and emissions, as well as future compliance oversight and inspections. They put the operations in context of similar plants and emissions from other facilities in the district.

Staff explained that the facility is prohibited from remediating hazardous waste or PFAS contaminated soil. Contaminated materials are tested for hazardous substances prior to DEC's approval for remediation at the facility, and SPAR project managers will not grant approval to transport to the facility any hazardous waste or prohibited contaminants. An engineered containment will prevent secondary contamination from contaminated waste and runoff from the operation. A baseline soil investigation of the property will occur before operations begin and another assessment of the property will occur when the facility closes.

Rep. Carpenter shared community concerns that STT could remediate hazardous materials outside of DEC's knowledge, and asked how DEC would know. Staff explained that we can't completely prevent illicit activity, but that the operators have a history with DEC of legal operations, and that if DEC discovered illegal activities we would be able to take action, including shutting down the facility.

Lisa Krebs-Barsis noted Rep. Carpenter's discussions with STT regarding a physical barrier for the materials being remediated, and she will note that in the approved plan documents. Staff confirmed for the Representative that self-reporting, scheduled inspections, and the ability to conduct unscheduled inspections are all in the permit documents or will be included as a condition of approval.

Lisa Krebs-Barsis noted the advantage this facility provides to the community, allowing for lower cost and more immediate remediation of local contaminated soil. The latter helps contain and prevent additional contamination following discovery.

Laura Achee
Information Officer & Legislative Liaison
Alaska Department of Environmental Conservation
Desk: (907) 465-5009
Mobile: (907) 419-3151

Attachment 3: Petition- Comment 28

STT Soil Burning Remediation Plant re-location

Petition

The reason for this petition is to change the location of the proposed STT dirt burner site. The location chosen Mile 27.4 is in close proximity to the high school, aquifers, residences, the Clamery and the bike path. The STT dirt burner will put off gasses like SO₂ into the air which will contaminate water aquifers and wells; SO₂ is not safe for humans, animals or plants. We believe a remote area in Nikiski is better suited for this site.

Name	Signature	Address	Phone#
Greg Hyatt		47551 Sunflower	
Joli Upton		53180 Bell Ave	
Jodi Bellows		53180 Bell Ave	
Callie Liebes		51614 Yalmaki way	
SAM Cox		48305 RS AVE	
Jessica Smith		500 PO Box 8183	
Don Smith		10 Box 8193 Nikiski	
Don Matthews		50945 vanderre Kenai	
Alicia Mathew		50945 vanderre Kenai	
Rylee Jackson		1412 Redoubt Kenai	
Verity Feltman		1412 Redoubt Kenai	
Joseph McElm		50690 Littmitz ave	
Ben Reaves		n/a	
Andrew Wall		53180 Bell Ave	
Kodiak Upton		53180 Bell Ave	
Jennifer Cottrill		54620 Asper Lane A1	
Whitni Stockton		52058 Marlere Ave	
HUNT, DEBRA		47392 Sunflower St	

* Please Sign this ☺

Mam Market 8/18/21

STT Soil Burning Remediation Plant re-location

Petition

The reason for this petition is to change the location of the proposed STT dirt burner site. The location chosen Mile 27.4 is in close proximity to the high school, aquifers, residences, the Clamery and the bike path. The STT dirt burner will put off gasses like SO₂ into the air which will contaminate water aquifers and wells; SO₂ is not safe for humans, animals or plants. We believe a remote area in Nikiski is better suited for this site.

Name	Signature	Address	Phone#
Rosemary Bird		50615 Shermay Way	
Kentona Wise		50060 Island Lake Ave	
Leslie Richards		51019 Eagle Ave	
Honeycutt, David L		32899 Kingery Rd	
Sienna Wallis		19700 Kotsina St.	
Richard C. Walker		Nikiski AK	
Chrystan Sahoerock		NIKISKI, AK	
Amber Whls		50677 LK St NIKISKI	
Brian Zinck		50150 Hatlampight	
Alexa Peppinger		51035 Nulphy	
Paul Hollingdale		50565 TaKoda St	
Mark Tommi		33642 Keystone Dr	
Christina Grossl		50663 Dossow St.	
Lisa Traxinger		50664 Dossow St	
Mariah McAmmon		55198 Rangvud Ct	
Ty Smith		50342 Wrangell Dr.	
Pat Ambrose		48809 Shamrock St	
Margana McLean		54420 Wilma	

8-19-21

M+M Market

STT Soil Burning Remediation Plant re-location**Petition**

The reason for this petition is to change the location of the proposed STT dirt burner site. The location chosen Mile 27.4 is in close proximity to the high school, aquifers, residences, the Clamery and the bike path. The STT dirt burner will put off gasses like SO₂ into the air which will contaminate water aquifers and wells; SO₂ is not safe for humans, animals or plants. We believe a remote area in Nikiski is better suited for this site.

Name	Signature	Address	Phone#
Randy Huckabay		P.O. Box 8656	
Martha Bluffel		P.O. 7736	
Jill Hardee		P.O. Box 7501	
Eric Hermanson		P.O. 7932	
Gary Goldbett		Box 5158	
Paula Zimmerman		PO Box 7321	
Jeremy Malloy		PO Box 7501	
Chris Gault		BA 7934	
Samantha Angleton		PO Box 7248	
Chris Oils			
Robert Fanning		PO Box 5393	
Paul Nelson		PO BOX 1864	
MARY LYALL		PO Box 7443	
Rhiannon Maudal		PO BOX 2582	
Tom Bashm		51126 Vandenberg	
Jefferson Shyle		50500 Kachemik Rd	
Scott CARSON		82090 MARIE AVE	
Geri Brigham		50401 Byrd Ave	

STT Soil Burning Remediation Plant re-location

Petition

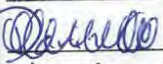
The reason for this petition is to change the location of the proposed STT dirt burner site. The location chosen Mile 1.4 is in close proximity to the high school, aquifers, residences, the Clamery and the bike path. The STT dirt burner will put off gasses like SO₂ into the air which will contaminate water aquifers and wells; SO₂ is not safe for humans, animals or plants. We believe a remote area in Nikiski is better suited for this site.

Name	Signature	Address	Phone#
Don Chamberlain		PO Box 8186 Nikiski	
Steve STEARNS		51710 Koolha Ln Nik	
Janis Nalos		55240 Chinook Rd Nikiski	
Lora Martin		56200 K.S.H	
ETHEL Dykstra		PO Box 7168, Nikiski	
John LeBlanc		51150 Chickadee St. Nikiski	
Al Walukewicz		51964 Holt Way Nikiski	
Dr. Burner		51478 Pipeline Rd	
ML ROBERTSON		4540 SILVER ST	
Amanda Hayes		50625 Takeda ave, Nikiski	
Angela McEwan		PO Box 7146, Nikiski, AK 99625	
John Jackson		32500 Leach St, Kenai 99611	
Reggie Truel		Bernice Lake	
Eric Litzen		50715 Maranatha Ln Kenai	
Christy Kegler		52237 Hilltop Rd, Kenai	
Patricia Thompson		11111 Ave	
John Jackson		Box 7175 Nikiski	
Deborah Denton		53597 Izigan	

STT Soil Burning Remediation Plant re-location

Petition

The reason for this petition is to change the location of the proposed STT dirt burner site. The location chosen Mile 27.4 is in close proximity to the high school, aquifers, residences, the Clamery and the bike path. The STT dirt burner will put off gasses like SO₂ into the air which will contaminate water aquifers and wells; SO₂ is not safe for humans, animals or plants. We believe a remote area in Nikiski is better suited for this site.

Name	Signature	Address	Phone#
Dolores M Rappe		70 Box 8209 Nikiski, AK 99635	
Robin Andersen		52040 MARINE AVE PO Box 8416 Nikiski	
GARY Kluge		PO Box 7287 ^{NIKISKI} AK 99635	
Angel Kluge		PO Box 7287 Nikiski, AK 99635	
Carol Cook		PO Box 1252 Kenai, AK	
Jacob Montagna		Box 476 Nikiski, AK 99635	
Jacob Montagna		Box 8274 Nikiski, AK 99635	
Rebecca Ward		50718 Kenai Spur	
Kyanna Davenport		PO Box 1216 Nikiski	
John P. KERNAN		51774 LINE ST. KENAI	
Kurt L Melvin		49113 Orchard Cir Kenai, AK 99611	
			
Lisa Pine-Dorsey		PO Box 8526 Nikiski, AK	
Christopher Griffin		5000 Island Cir	
Tracie Thomas		52715 Kenai Spur	
Ray Bjork		Spur Hwy	
Michael Pizz		Diamond St Nikiski	
Amy Keir		50590 Romanov Dr.	

STT Soil Burning Remediation Plant re-location

Petition

The reason for this petition is to change the location of the proposed STT dirt burner site. The location chosen Mile 27.4 is in close proximity to the high school, aquifers, residences, the Clamery and the bike path. The STT dirt burner will put off gasses like SO₂ into the air which will contaminate water aquifers and wells; SO₂ is not safe for humans, animals or plants. We believe a remote area in Nikiski is better suited for this site.

Name	Signature	Address	Phone#
LEROY J BJORK		52781 Kenai Spur Hwy Nikiski, AK 99635	
JOANNE M BJORK		52781 Kenai Spur Hwy Nikiski, AK 99635	
Bob J. Bjork		52781 Kenai Spur Hwy Nikiski, AK 99635	
Roy J. Bjork		52781 Kenai Spur Hwy Nikiski, AK 99635	
Cynthia Cook		49755 Tuloff Rd Kenai AK 99611	
Ray J. Bjork		52781 Spur Hwy Nikiski, AK 99635	
Melissa Rohn		52170 Merrill Ave Nikiski, AK 99635	
Theresa Rohn		52172 Merrill Ave Nikiski, AK 99635	
Dick Johnson		50075 Shumya Way Kenai	

STT Soil Burning Remediation Plant re-location

Petition

The reason for this petition is to change the location of the proposed STT dirt burner site. The location chosen Mile 27.4 is in close proximity to the high school, aquifers, residences, the Clamery and the bike path. The STT dirt burner will put off gasses like SO₂ into the air which will contaminate water aquifers and wells; SO₂ is not safe for humans, animals or plants. We believe a remote area in Nikiski is better suited for this site.

Name	Signature	Address	Phone#
Heather Rucker		52092 Merrill Ave	
Daniel Moore		52305 KSPur Ave ^{Nikiski}	
Mark T. Gage		52092 Merrill Ave	
Monica McLean		52525 Leach St	
Sam Moore		52305 Kerei spur hwy	
Kate Schwarzer		47582 Belmont Cir Nik	
Michele Begor		51635 McGowan Rd	
Christopher Ross		52232 Rediske Ave	
Kaitlyn Ross		52232 Rediske Ave	
Nichole Monroe		50590 Romanas Drive	
Charlene Johnson		52877 Bumer Dr	
Sarah Stanton		1114 First Ave	
Dave Shoemaker		47061 Emerald Street	

Attachment 4: Alaska Community Action on Toxics Letter- Comment 29



1225 E. International Airport Road, Suite 220
Anchorage, Alaska 99518
Phone: (907) 222-7714; Fax (907) 222-7715
www.akaction.org

**Comments on Proposed Operations Plan for the Soil Treatment
Technologies, LLC Thermal Treatment Facility, Nikiski, Alaska
August 4, 2021**

These comments are submitted by Alaska Community Action on Toxics (ACAT), a statewide non-profit public interest environmental health and justice research and advocacy organization dedicated to protecting public health. We are submitting comments on the Operations Plan for the proposed Soil Treatment Technologies, LLC thermal treatment facility ("STT facility"), 52520 Kenai Spur Highway in Nikiski, Alaska. ACAT has members and their families who live, work, attend school, and recreate in the immediate area that would be affected. Members who live in the immediate vicinity have contacted us to express their concerns and opposition to the proposed facility.

The majority of the 50+ comments on the proposed permit were in opposition to the STT facility and based on legitimate concerns of people in the community about adverse effects that this facility will have on air and water quality, public health, property values, businesses and the local economy, wetlands, and wildlife. Over 200 local residents signed a petition in opposition to the facility. ADEC failed to conduct a meaningful public review process and issued the "Minor Permit" without regard or due consideration of the public health, safety, and property rights issues raised in the public comments. People raised concerns about the lack of public notice, lack of adequate time for review, that the process was biased toward the applicant rather than the interests of the community and public health, and that many people were at unfair disadvantage in the process because they do not have computers or internet access. By issuing the permit, ADEC failed to meet the obligation to its mission of: *"Conserving, improving, and protecting Alaska's natural resources and environment to enhance the health, safety, and economic and social well-being of Alaskans."* It is within the Department's authority and pursuant to its obligations under the Constitution of the State of Alaska, the Public Trust Doctrine, and statutes and regulations to heed the public health threat posed by this proposed facility and to protect the rights and common welfare of present and future generations of Alaskans by revoking the permit and rejecting Operations Plan. The public review process and comment period for both the permit and operations plan (two weeks) has been insufficient.

The permit states that air pollution is prohibited and that “no person may permit any emission which is injurious to human health or welfare, animal or plant life, or property, or which would unreasonably interfere with the enjoyment of life or property.” Yet, the facility is permitted to release annually up to 18 tons of NO_x, 12 tons of CO, 27.9 tons of SO₂, 5.9 tons of PM₁₀, 2.5 tons of PM_{2.5}, and 27.4 tons of VOCs. Refer to Table 1 for a summary of health effects associated with these air pollutants. These emissions present a serious public health hazard to the community of Nikiski and in particular to the people downwind and living within ½ mile of the proposed facility and to the children, teachers, and workers attending school at the middle and high school.

A recent study published in the American Journal of Public Health stated: “Air pollution exposure has been linked with preterm birth and low birth weight, known risk factors for many neurodevelopmental disorders in children. A growing body of human studies associate exposure to combustion-related air pollutants (PM_{2.5}, polycyclic aromatic hydrocarbons, nitrogen dioxide, black carbon) with adverse effects on brain development, including deficits in intelligence, memory, and behavior. Polycyclic aromatic hydrocarbons, a component of PM_{2.5}, have been associated with developmental delay; reduced IQ; symptoms of anxiety, depression, and inattention; ADHD; and reduced size of brain regions important for processing information and impulse control. Other studies have linked roadway proximity, traffic-related PM, elemental carbon, or nitrogen dioxide to decreased cognitive function, including deficits in memory and attention. The effect of polycyclic aromatic hydrocarbon exposures during fetal development on cognitive and behavioral outcomes is magnified by material hardship or maternal demoralization. Low-income communities are thus disproportionately exposed and uniquely vulnerable because of family and community economic hardship. Increasing evidence links prenatal exposure to combustion-related air pollutants and PM_{2.5} to autism spectrum disorder.”¹ Emerging research, including a study from Harvard T.H. Chan School of Public Health,² finds that breathing more polluted air over many years may itself worsen the effects of COVID-19.

¹ Devon C. Payne-Sturges, Melanie A. Marty, Frederica Perera, Mark D. Miller, Maureen Swanson, Kristie Ellickson, Deborah A. Cory-Slechta, Beate Ritz, John Balmes, Laura Anderko, Evelyn O. Talbott, Robert Gould, and Irva Hertz-Picciotto, 2019: Healthy Air, Healthy Brains: Advancing Air Pollution Policy to Protect Children’s Health, *American Journal of Public Health* **109**, 550-554, <https://doi.org/10.2105/AJPH.2018.304902>.

² <https://doi.org/10.1126/sciadv.abd4049>

ACAT Table 1. Summary of Adverse Health Impacts for Major Harmful Air Pollutants

Pollutant	Health Impacts
Nitrogen Oxides	NO ₂ specifically: lower logical memory ¹ , more severe allergic responses, reduced pulmonary function, asthma, lower birth weight, and increased risk of preterm birth ² , increased risk of stroke ⁴ , deteriorates spatial learning and potentiates amyloid production ⁷ , contributes to an increased incidence of chronic cough ²⁰
Sulfur Dioxides	Respiratory irritant ²⁰ , increased risk of stroke ⁴ , induces inflammation of membranes, causes bronchial narrowing, and slows mucus flow ²³
PM ₁₀	Contributes to more severe allergic responses, increased risk of preterm birth, increased risk of pneumonia, and reduced lung function ²
PM _{2.5}	Penetrates deep in to the respiratory tract wherein it can be absorbed in to the blood stream ²¹ , can be translocated to organ tissue through blood circulation, contributes to more severe allergic responses, decreased birth weight, and asthma ² , lower verbal learning performance ¹ , increased cardiovascular mortality ^{4,5} , reduced cardiovascular function ^{5,22} , has the ability to enter the olfactory epithelium and can be transported to the olfactory bulb causing olfactory dysfunction ¹⁹ , induces inflammatory reactions across organ systems ²²
Formaldehyde	Eye, nose, and throat irritant resulting in cough, wheezing, chest pains, and bronchitis; a carcinogen resulting in increased incidence of lung and nasopharyngeal cancer ^{5,26}
Toluene	Physiological depression of the central nervous system ^{16,17} , cardiotoxic ¹⁷ , causes renal tubular acidosis and can cause headache, dizziness, confusion, muscle weakness, and even muscle paralysis ¹⁷
Xylenes	Nose and throat irritation, severe lung congestion, pulmonary hemorrhages, edema, impaired short-term memory, as well as alteration in equilibrium or body balance ⁸ , reduced muscle power, depression of the central nervous system inducing symptoms such as headache, dizziness, and vomiting ⁹ , pathological changes in ovarian tissue, ovary atrophy ¹⁰
Acetaldehyde	Carcinogenic and genotoxic ^{1,27} , can cause mild respiratory irritation ²⁷
Ethyl Benzene	Ototoxic (having a toxic effect on the ear or its nerve supply) ^{24,25}
Benzene	Reduced pulmonary function ² , decreases the number of cells in bone marrow causing blood disorders ²⁵ , genotoxic causing genetic damage including DNA cross linking and sister chromatid exchanges ^{3,18} , increases cardiovascular risk and injury ⁶ , shortness of breath and lethargy ¹⁷ , carcinogenic ¹⁸
Phenol	Accelerates pubertal development and disrupts estrogenic activity ^{12,13}
Hexane	Inhibits follicular development, damages ovarian cell ultrastructure, and can cause menstrual abnormalities ¹⁴ , gestational inhalation can alter the reproductive cycle of female offspring ¹⁵

The Alaska Department of Environmental Conservation (ADEC) issued a "minor" permit (AQ1657MSS01) that would allow a waste treatment company, Soil Treatment Technologies, LLC (STT) to burn waste and generate toxic pollution

within yards of people's homes. ADEC's contravenes the Resource Conservation and Recovery Act (RCRA) and the Clean Air Act (CAA) and denies Alaskans vital health and environmental protection these statutes were enacted to provide.

There can be no question that the purpose of STT's "soil treatment unit" is to burn waste, specifically petroleum and solvent wastes that have been dumped or spilled in soil. According to the scanty information provided in ADEC's permit, the unit will cook contaminated soil in a rotary drum and then burn the organic chemicals that process yields in a thermal oxidizer. ADEC has made no effort to identify – let alone specify – the contaminated soils that can be burned in this unit. Nor has ADEC made any effort to identify the hazardous air pollutants that will be emitted from this unit, let alone provide assurance that they will not harm the health of the people who are forced to breathe this unit's pollution.

Of particular concern is ADEC's disregard of its own expectation that the unit will be treating soil contaminated with "chlorinated compounds." Heating and then burning chlorinated compounds will create dioxins, polycyclic organic matter, and other complex and persistent hazardous air pollutants. Even assuming that the thermal oxidizer will destroy 99 percent of volatile organic compounds, it will not destroy these organic chemicals. Moreover, because pollutants such as dioxins and furans are persistent, bioaccumulative, and extremely toxic even in tiny quantities, allowing the unit to create and emit even miniscule amounts of these pollutants will create long-term contamination of nearby neighborhoods and put the residents of these neighborhoods at risk of cancer and other serious adverse health effects.

A. ADEC's Reliance on a One-Line Narrative Prohibition on Treating Hazardous Waste Contravenes RCRA and Defeats Its Preventative Purpose.

It is well established that Congress enacted RCRA to be a preventative statute – a law that would prevent the harms that arise from treating hazardous wastes rather than just seeking to mitigate these harms after they occur. Discarded chlorinated solvents are hazardous wastes. The permit contemplates that STT will burn just that, soil into which "chlorinated compounds" have been dumped. Despite this, ADEC assumes that a single line in the permit will suffice to prevent precluding STT from burning hazardous waste. It will not. ADEC needs to establish testing and reporting requirements to ensure that STT does not burn hazardous waste. Otherwise, it is putting STT's neighbors at risk.

Nor does it suffice for the permit to say that "During a phone conversation

on April 7, 2021, the Permittee indicated that soils contaminated with chlorinated compounds may be treated on a case-by-case basis following approval by the Department's Division of Spill Prevention and Response, Contaminated Sites Program (CSP).¹ STT's vague "indicat[ion]" that CSP will review and approve the treatment of chlorinated solvents falls far short of ensuring that STT does not burn hazardous wastes. First, a statement of what STT has "indicated" is not a requirement of any kind. Second, neither CSP nor ADEC nor the people living near STT have any way of knowing whether STT will actually alert CSP and seek approval before it treats waste contaminated with chlorinated compounds, let alone whether those wastes are actually hazardous wastes for which a RCRA permit would be required. Third, the permit does not say what criteria CSP would apply in deciding to allow STT to treat wastes contaminated with chlorinated compounds, and provides no reason to expect that CSP's decisions will be adequately protective of public health and the environment.

B. Even if It Does Not Treat Hazardous Waste, STT's Facility Is an Industrial Waste Incinerator That Must Comply With Clean Air Act Incinerator Standards.

Assuming *arguendo* that SST will not be burning hazardous waste, it will be burning solid waste and is therefore subject to the Clean Air Act's requirements for solid waste incineration units.

ADEC states that the contaminated soil will first be cooked at 700 degrees Fahrenheit in a "rotary dryer drum." The stated purpose of the rotary dryer drum, however, is not to dry the contaminated soil but to "volatilize" the volatile organic compounds contaminating it. The same high high-temperatures that volatilize these compounds will also, necessarily, combust some of them. Because there at least some combustion will occur in it, the so-called "dryer drum" is in fact a combust unit. And because the soil being combusted in that unit, it is a solid waste incineration unit within the meaning of Clean Air Act § 129(g), 42 U.S.C. § 7429(g). Section 129(g) provides "[t]he term "solid waste incineration unit" means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels)." *Id.* It is well established that the term "any" means "any."

Even if solid waste combustion will not occur in the "rotary drum dryer," it will occur in the thermal oxidizer. ADEC states the exhaust gases from the "dryer" – which by ADEC's admission could include chlorinated organic compounds – will be burned in a "thermal oxidizer." Gases contained within STT's thermal oxidizer

are “contained” gases that come from the waste that STT puts in the dryer. They are, therefore, solid waste within the meaning of RCRA and the Clean Air Act. The Clean Air Act provides that “solid waste” has the meaning established by EPA pursuant to RCRA, 42 U.S.C. § 7429(g)(6), and RCRA provides expressly that “[t]he term “solid waste” means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities,” 42 U.S.C. § 6903(27). Because it burns these contained gases, STT’s unit is a solid waste incineration unit.

Lastly, even if the dryer and thermal oxidizer could be viewed as something other than incinerators individually, they must be viewed together as a “distinct operating unit” of STT’s facility. Viewed together, they are a solid waste incineration unit that must meet the requirements of Clean Air Act § 129.

Because the Clean Air Act’s incinerator requirements apply unambiguously to all solid waste incineration units of any kind, STT must obtain a Clean Air Act Title V permit and meet all the requirements of EPA’s Clean Air Act for industrial incinerators. STT cannot avoid these requirements by obtaining a “minor” permit. Section 129 applies to all incinerators, regardless of their size. Indeed, Congress’ decision not to provide a size cutoff for the incinerator requirements in § 129 reflects its understanding that the pollution from all incinerators is especially dangerous even in small quantities and needs to be controlled, monitored, and reported to the public.

The Operations Plans falsely claims that it is protective of human health and the environment. There are major deficiencies in the Operations Plan, including:

- Failure to prevent excessive releases of hazardous air pollutants in close proximity to a residential area, school, and recreational trails. There are homes, wells, a school, a seafood processing plant and other small businesses, and recreational paths in the near vicinity of the proposed facility. This is unacceptable. These hazardous air pollutants threaten human health.
- Failure to adequately demonstrate that it can prevent contamination of drinking water sources, including public and private wells in the area. The operations plan must include a hydrological analysis.
- Failure to adequately demonstrate how it will protect wetlands, surface waters, and wildlife, including aquatic life, bald eagles, sandhill cranes, moose, and other species.

- P 6—the operations plan does not specify how it is determined that the material has had an adequate retention time in the dryer.
- P 7—the operations plan does not define for what “beneficial uses” the treated soils will be used.
- P 7—the operations plan does not provide a sufficient explanation for the safe disposal of the concentrated, contaminated dust and particles from the filter bags.
- P 8—the operations plan states that “clean gases are exhausted to the atmosphere at approximately 800 degrees F.” What are these “clean” gases?
- P 8—it is not acceptable to merely inspect water collected in the catch basin before discharging it onto the post-treated pile. The water should be sampled to ensure it meets appropriate water quality standards.
- P 11—soils contaminated with chlorinated hydrocarbons should never be burned in a facility such as this (for reasons stated above). On P 12, it states that STT will not accept any characteristic or RCRA hazardous waste, yet it is proposed that the facility might accept soils contaminated with chlorinated solvents. This is a contradiction.
- P-15—who determines if soil is “no longer deemed “contaminated?”
- P 2 of 43—the number of samples per cubic yard is totally inadequate to properly characterize the post-treatment excavated soil.
- The operations plan fails to address and identify measures to prevent safety hazards such as fires and explosions (e.g. originating in baghouse or other parts of the facility).
- STT could remediate hazardous materials outside of DEC’s knowledge. The operators do not have a demonstrated record of safe operations or compliance. There is a lack of public trust in STT as reflected in public comments on the proposed permit.

Based on the threat to public and environmental health, the permit (AQ1657MSS01) should be revoked, and the proposed operations plan rejected. Safe non-combustion alternatives should be required for the destruction of contaminated soils.

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CC EPA Region 10 Office of Air and Radiation, and RCRA Program

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