



# Kenai Peninsula Borough

144 North Binkley Street  
Soldotna, AK 99669

## Meeting Agenda Assembly

*Brent Johnson, President*  
*Brent Hibbert, Vice President*  
*Jesse Bjorkman*  
*Lane Chesley*  
*Tyson Cox*  
*Richard Derkevorkian*  
*Cindy Ecklund*  
*Bill Elam*  
*Mike Tupper*

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Tuesday, January 4, 2022

6:00 PM

Betty J. Glick Assembly Chambers

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**Zoom Meeting ID: 884 7373 9641 Passcode: 671108**

Zoom Meeting ID: 884 7373 9641 Passcode: 671108

### CALL TO ORDER

### PLEDGE OF ALLEGIANCE

### INVOCATION

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

[Clerk's Note: The invocation was given by Willy Dunne.]

### ROLL CALL

### COMMITTEE REPORTS

### APPROVAL OF AGENDA AND CONSENT AGENDA

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

**ACTION ITEMS CURRENTLY ON CONSENT AGENDA:**

KPB 3821 - December 7, 2021 Regular Assembly Meeting minutes  
Resolution 2022-001 – Forming South Bend Bluff RIAD  
Resolution 2022-002 – Shared Fisheries Business Tax Program  
Resolution 2022-003 – Declaring Borough Malapportioned  
Ordinance 2021-19-33 – Appropriation Nikiski Senior Service Area  
Ordinance 2022-01 – Comm Tower Agmt. Nikiski Fire Station 1  
KPB 3820 – Notice of Withdrawal of Protest – Alaska Off Grid Cannabis  
KPB 3806 – Petition to Vacate Fauerbach Court  
KPB 3807 – Petition to Vacate Koto Court  
KPB 3808 – Appointments to NREATF  
KPB 3809 – Appointment to SKPHSAB

**ACTION ITEMS ELIGIBLE TO BE ADDED TO THE CONSENT AGENDA:**

Ordinance 2021-19-30 – Accepting \$255,854.84 from US DHS on behalf of WESA  
Ordinance 2021-19-32 – Accepting \$153,940.1 from SOA Federal Pass-through

**APPROVAL OF MINUTES**

[KPB-3821](#) December 7, 2022 Regular Assembly Meeting Minutes

Attachments: [December 7, 2022 Regular Assembly Meeting Minutes](#)

**COMMENDING RESOLUTIONS AND PROCLAMATIONS****PRESENTATIONS WITH PRIOR NOTICE**

*(20 minutes total)*

1. [KPB-3822](#) Kenai Peninsula Economic Development District Update, Tim Dillon, Executive Director (10 Minutes)

Attachments: [Presentation](#)

2. [KPB-3823](#) Homer Harbor Expansion Update, Bryan Hawkins, Homer Harbor Master (10 Minutes)

Attachments: [Hawkins Presentation](#)  
[Homer Port Expansion Project Synopsis](#)  
[Homer USACE Alaska Delegation](#)

**PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA**

*(3 minutes per speaker; 20 minutes aggregate)*

**ITEMS NOT COMPLETED FROM PRIOR AGENDA**



**PUBLIC HEARINGS ON ORDINANCES**

*(Testimony limited to 3 minutes per speaker)*

**Ordinances referred to Finance Committee**

[2021-19-30](#) An Ordinance Accepting and Appropriating the Remaining Balance of \$255,854.84 from the U.S. Department of Homeland Security's Staffing for Adequate Fire and Emergency Response Grant, and Appropriating \$5,117.10 for the Administrative Fee on Behalf of Western Emergency Service Area (Mayor)

Attachments: [Ordinance 2021-19-30](#)  
[Amendment Memo 010422](#)  
[Memo](#)  
[Award Letter](#)  
[Reference Copy Resolution 2013-022](#)

[2021-19-31](#) An Ordinance Appropriating \$770,164 to the South Bend Bluff Estates Road Improvement Special Assessment District (Mayor)

Attachments: [Ordinance 2021-19-31](#)  
[Memo](#)

[2021-19-32](#) An Ordinance Accepting and Appropriating Funding from the State of Alaska in the Amount of \$153,940.61 for the Healthy and Equitable Communities Program, a Federal Pass-Thru Award under the Centers for Disease Control and Prevention (Mayor)

Attachments: [Ordinance 2021-19-32](#)  
[Cox Amendment](#)  
[Cox Documents](#)  
[Memo](#)  
[Allocations Notice](#)

**UNFINISHED BUSINESS****NEW BUSINESS****1. Resolutions****Resolutions referred to Finance Committee**

[2022-001](#) A Resolution To Form the South Bend Bluff Estates Road Improvement Assessment District and Proceed with the Improvement (Mayor)

Attachments: [Resolution 2022-001](#)  
[Mayors Report and Exhibits 1-4](#)  
[Public Comments 010422](#)

[2022-002](#) A Resolution Adopting an Alternate Allocation Method for the FY22 Shared Fisheries Business Tax Program and Certifying that this Allocation Method Fairly Represents the Distribution of Significant Effects of Fisheries Business Activity in the Cook Inlet Fisheries Management Area (Mayor)

Attachments: [Resolution 2022-002](#)  
[Memo](#)  
[DCCED Letter](#)

Resolutions referred to Policies and Procedures Committee

[2022-003](#) A Resolution Declaring the Borough Assembly and Board of Education to be Malapportioned and Authorizing the Assembly President to Appoint a Reapportionment Committee (Johnson)

Attachments: [Resolution 2022-003](#)  
[Memo](#)  
[Membership List](#)

Resolutions referred to Legislative Committee

[2022-004](#) A Resolution Supporting the Constitutional Right of Alaska Grand Juries to Investigate and Make Recommendations on Public Welfare and Safety Concerns (Bjorkman, Elam) (Hearing on 01/18/22)

[Clerk's Note: The sponsors of Resolution 2022-004 requested introduction at the 01/04/22 meeting and public hearing at the 01/18/22 meeting.]

*Attachments:* [Resolution 2022-004](#)  
[Legal Memo to Assembly](#)  
[Link to SB15](#)  
[Public Comments 011822](#)  
[eComment](#)  
[Memo](#)  
[Public Comments](#)

## 2. Ordinances for Introduction

Ordinances for Introduction and referred to Finance Committee

[2021-19-33](#) An Ordinance Appropriating Additional Funds to Support Results of the Nikiski Senior Service Area FY2020 and FY2021 Due Diligence Audit or Review Cost Proposal (Mayor)

*Attachments:* [Ordinance 2021-19-33](#)  
[Memo](#)  
[Public Comment 011822](#)

Ordinances for Introduction and referred to the Lands Committee

[2022-01](#) An Ordinance Authorizing A Communication Tower Agreement with Vertical Bridge S3 Assets, LLC at Nikiski Fire Station 1 (Mayor)

*Attachments:* [Ordinance 2022-01](#)  
[Memo](#)  
[Advisory Board Recommendations](#)  
[Tower Site Map & Drawings](#)  
[Site Agreement](#)  
[Reference Copy Ordinance 71-22](#)

## 3. Other

Other Items referred to Finance Committee

[KPB-3820](#) Authorizing the Borough Clerk to Forward a Notice of Withdrawal of Protest for Alaska Off Grid Cannabis Co. Standard Marijuana Cultivation Facility, New License No 27111 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 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 KPB 7.30.020(A)

Attachments: [Notice of Withdrawal](#)

Other items referred to Lands Committee

[KPB-3806](#) Petition to Vacate Fauerbach Court Right-of-way Vacation and Associated Utility Easements and Anchor Easement, Clam Gulch Heights Glendening 1979 Subdivision, KPB File 2021-150V (Mayor)

Attachments: [Petition to Vacate](#)

[KPB-3807](#) Petition to Vacate Koto Court Right-of-way Vacation and Associated Utility Easements, Murray Subdivision Buck Addition, KPB File 2021-154V (Mayor)

Attachments: [Petition to Vacate Koto Court](#)

Other items referred to Policies and Procedures Committee

[KPB-3808](#) Confirming Appointments to the North Road Extension Advisory Task Force (Mayor)

Katelyn Sarvela, Seat D, Term Expires October 12, 2022

Jason Ross, Seat E, Term Expires October 12, 2022

Timothy O'Brien, Seat F, Term Expires October 12, 2022

Attachments: [Appointments](#)

[KPB-3809](#) Confirming an Appointment to the South Kenai Peninsula Hospital Service Area Board (Mayor)

Timothy J. Whip, Seat F, Term Expires 10/2023

Attachments: [Appointment](#)

**MAYOR'S REPORT**

[KPB-3810](#) Mayor's Report Cover Memo

Attachments: [Cover Memo](#)

1. Assembly Requests/Responses - None.

2. Agreements and Contracts

a. [KPB-3811](#) Sole Source Waiver – Analytix Technologies, LLC

Attachments: [Sole Source AnalyTix Technologies](#)

b. [KPB-3812](#) Authorization to Award a Contract for RFP22-011 Central Peninsula Landfill Leachate Infrastructure Improvement Design to Geosyntec Consultants, Anchorage, AK

Attachments: [Authorization to Award Contract FRP22-011](#)

c. [KPB-3813](#) Authorization to Award a Contract for ITB22-023 Central Peninsula Landfill Brush Burning 2021 to Andrews and Sons LLC., Seward, AK

Attachments: [Authorization to Award Contract ITB22-023](#)

d. [KPB-3814](#) Authorization to Award a Contract for RFP22-009 Kachemak Selo School Schematic Design to Architects Alaska Inc. Anchorage, AK

Attachments: [Authorization to Award Contract RFP22-009](#)

e. [KPB-3815](#) Authorization to Award a Contract for RFP22-012 Custody and Safekeeping of Marketable Debt Securities to Wells Fargo Institutional Retirement and Trust, Anchorage, AK

Attachments: [Authorization to Award Contract RFP22-012](#)

f. [KPB-3816](#) Sole Source Waiver – Wolverine Supply, Inc. Nanwalek Sewer Line Repairs

Attachments: [Sole Source - Wolverine Supply](#)

3. Other

a. [KPB-3817](#) Investment Report Quarter Ended 09/30/21

Attachments: [Investment Report](#)

b. [KPB-3818](#) Revenue-Expenditure Report - November 2021

Attachments: [Revenue-Expenditure Report - November 2021](#)

- c. [KPB-3819](#) Budget Revisions - November 2021

Attachments: [Budget Revisions - November 2021](#)

## **PUBLIC COMMENTS AND PUBLIC PRESENTATIONS**

### **ASSEMBLY COMMENTS**

### **PENDING LEGISLATION**

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

1. [2021-41](#) An Ordinance Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures (Mayor, Johnson) [Tabled on 02/01/22]

(Elam, Derkevorkian) Substitute: An Ordinance Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures (Elam, Derkevorkian) [Tabled on 02/01/22]

Attachments: [Ordinance 2021-41](#)  
[Elam Amendment #2 \(notice of reconsideration given\)](#)  
[Ecklund Tupper Amendment \(amendments pending\)](#)  
[Ordinance 2021-41 \(Elam, Derkevorkian\) Substitute](#)  
[Memo](#)  
[Material Site Work Group Timeline](#)  
[Legal Memo re Assembly Questions](#)  
[Public Comments 021522](#)  
[Public Comments 020122](#)  
[Public Comments 020122](#)  
[Public Comment 011822](#)  
[Reference Copy Ordinance 2006-01 SUB](#)  
[Reference Copy Resolution 2018-004 SUB](#)  
[Reference Copy Resolution 2018-025](#)  
[Elam Amendment #1 \(dealt with on 011822\)](#)

## **INFORMATIONAL MATERIALS AND REPORTS**

### **ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS**

1. January 18, 2022 Regular Assembly Meeting

6:00 PM Betty J. Glick Assembly Chambers Borough Administration Building

Remote participation available through Zoom

Meeting ID: 884 7373 9641 Passcode: 671108

## ADJOURNMENT

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

*The meeting will be held through Zoom, the Meeting ID: 884 7373 9641 Passcode: 671108 and in-person from the Betty J. Glick Assembly Chambers, Borough Administration Building, Soldotna, Alaska. COVID-19 mitigation protocols will be observed. To join the meeting from a computer, visit <https://zoom.us/j/88473739641>. To attend the Zoom meeting by telephone call toll free 1-888-788-0099 or 1-877-853-5247 and enter the Meeting ID: 884 7373 9641 Passcode: 671108. Detailed instructions will be posted on at the Kenai Peninsula Borough's main page at [kpb.us](http://kpb.us): "Meeting and Public Notices" "Current Assembly Agenda".*

*Copies of the agenda and ordinances to be considered can be viewed on the website referenced above or at the Public Bulletin Board located on the window right of the double doors in the back of the Borough Administration Building. For further information, please call the Clerk's Office at 714-2160 or toll free within the Borough at 1-800-478-4441, Ext. 2160. Visit our website at [www.kpb.us](http://www.kpb.us) for copies of the agenda, meeting summaries, ordinances and resolutions.*



# Kenai Peninsula Borough

144 North Binkley Street  
Soldotna, AK 99669

## Meeting Minutes

### Assembly

*Brent Johnson, President*

*Brent Hibbert, Vice President*

*Jesse Bjorkman*

*Lane Chesley*

*Tyson Cox*

*Richard Derkevorkian*

*Cindy Ecklund*

*Bill Elam*

*Mike Tupper*

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Tuesday, December 7, 2021

6:00 PM

Betty J. Glick Assembly Chambers

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**Zoom Meeting ID: 938 6524 5999 Passcode: 886199**

### CALL TO ORDER

### PLEDGE OF ALLEGIANCE

### INVOCATION

[Clerk's Note: President Johnson offered a moment of silence.]

### ROLL CALL

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

Also present were:

Aaron Rhoades, Chief of Staff

Brandi Harbaugh, Finance Director

Sean Kelley, Borough Attorney

Johni Blankenship, Borough Clerk

Michele Turner, Deputy Borough Clerk

### COMMITTEE REPORTS

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

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

Assembly Member Bjorkman stated the Legislative Committee met and discussed its agenda item.



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**APPROVAL OF AGENDA AND CONSENT AGENDA**

- [KPB-3755](#) November 9, 2021 Regular Assembly Meeting Minutes  
approved.
- [2021-085](#) A Resolution Modifying the Scope of the Previously Appropriated Local Funds for Design of the Homer Roof Replacement Project to Include Phases 2 and 3 (Mayor)  
**This Resolution was adopted.**
- [2021-086](#) A Resolution Authorizing Award of a Contract for the Kachemak Selo School Schematic Design Project (Mayor)  
*[Clerk's Note: Per KPB 22.40.050(F), the final whereas clause was updated to read, "at their December 6, 2021 meeting, the Kenai Peninsula Borough School District Board of Education recommended approval of the contract by unanimous consent;" ]*  
**This Resolution was adopted.**
- [2021-087](#) A Resolution Approving Board Bylaws for the South Kenai Peninsula Hospital Service Area Board (Mayor at the Request of the South Kenai Peninsula Hospital Service Area Board)  
**This Resolution was adopted.**
- [2021-084](#) A Resolution Confirming the Appointment of an Assembly Member to a Non-Borough Board (Johnson)  
**This Resolution was adopted.**
- [2021-088](#) A Resolution Supporting the Transportation Priorities to be Considered for Grant Funding to be Submitted to the State of Alaska Department of Transportation and Public Facilities (Mayor)  
**This Resolution was adopted.**
- [2021-19-30](#) An Ordinance Accepting and Appropriating the Remaining Balance of \$255,854.84 from the U.S. Department of Homeland Security's Staffing for Adequate Fire and Emergency Response Grant, and Appropriating \$5,117.10 for the Administrative Fee on Behalf of Western Emergency Service Area (Mayor)  
**This Budget Ordinance was introduced and set for public hearing.**
- [2021-19-31](#) An Ordinance Appropriating \$770,164 to the South Bend Bluff Estates

Road Improvement Special Assessment District (Mayor)

**This Budget Ordinance was introduced and set for public hearing.**

[2021-19-32](#)

An Ordinance Accepting and Appropriating Funding from the State of Alaska in the Amount of \$153,940.61 for the Healthy and Equitable Communities Program, a Federal Pass-Thru Award under the Centers for Disease Control and Prevention (Mayor)

**This Budget Ordinance was introduced and set for public hearing.**

[2021-41](#)

An Ordinance Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures (Mayor, Johnson) (Hearing on 01/18/22)

**This Ordinance was introduced and set for public hearing.**

[KPB-3753](#)

Confirming Appointments to the Board of Equalization (Mayor)

Chris Van Slyke, Seat A, Term Expires 12/31/2024

James Baisden, Alternate Seat A, Term Expires 12/31/2023

**approved.**

[KPB-3775](#)

Confirming Appointments to the North Road Extension Advisory Task Force (Mayor)

Joseph Ross, Seat A, Term Expires October 12, 2022

Scott Hamann, Seat B, Term Expires October 12, 2022

Nathan Warren, Seat C, Term Expires October 12, 2022

**approved.**

[KPB-3781](#)

Confirming the Appointment to the Funny River Advisory Planning Commission (Mayor)

Kevin Lee O'Brien, Seat D, Term Expires September 30, 2024

**approved.**

[KPB-3785](#)

Confirming the Appointment to the Eastern Peninsula Highway Emergency Service Area (Mayor)

Cristina Rachel Rolfe, Seat A, Term Expires October, 2024

**approved.**

Approval of the Agenda and Consent Agenda

President Johnson called for public comment.

The following people spoke in opposition to Ordinance 2021-19-32:

**Joan Corr**

**Dave Peck**

**Christine Hutchinson**

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

**The motion to approve the agenda and consent agenda carried by the following vote:**

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

## **COMMENDING RESOLUTIONS AND PROCLAMATIONS**

### **PRESENTATIONS WITH PRIOR NOTICE**

1. [KPB-3756](#) Central Peninsula Hospital Quarterly Report (10 Minutes)

*[Clerk's Note: Rick Davis, CEO gave a quarterly update to the assembly.]*

### **PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA**

President Johnson called for public comment.

The following people spoke in support of judicial injustice Resolutions:

**David Haeg**

**James Price, Nikiski**

**Scott Egger, Ninilchik**

**Shane Serrano, Soldotna**

**Dave Gremmel, Soldotna**

**Mako Haggerty**, Homer reminded everyone the deadline for the public comment period regarding the statewide hatcheries and stocking plan was open to January 31, 2022.

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

### **ITEMS NOT COMPLETED FROM PRIOR AGENDA**

### **PUBLIC HEARINGS ON ORDINANCES**

[2021-19-28](#) An Ordinance Allocating and Redirecting U.S. Department of Treasury, Coronavirus State and Local Fiscal Recovery Funds Established by the American Rescue Plan Act of 2021 and Appropriating General Fund Fund Balance to Specific Pay-Go Capital Projects (Mayor)

**Cox moved to enact Ordinance 2021-19-28.**

President Johnson called for public comment with none being offered.

**The motion to enact Ordinance 2021-19-28 carried by the following vote:**

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

[2021-38](#) An Ordinance Amending KPB Title 7 Regarding Alcohol and Marijuana Regulations to Require Applicant Compliance with Form Filing Requirements under Alaska Law, Add Three Items Under Applicant Standards for Review, and to Define the Term Applicant (Cox)

**Bjorkman moved to enact Ordinance 2021-38.**

President Johnson called for public comment with none being offered.

**The motion to enact Ordinance 2021-38 carried by the following vote:**

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

[2021-40](#) An Ordinance Amending KPB 2.40.015 Regarding Planning Commission Membership and Apportionment (Cox, Chesley)

**Bjorkman moved to enact Ordinance 2021-40.**

President Johnson called for public comment.

The following people spoke in support of Ordinance 2021-40:

**Stephanie Queen**, Soldotna City Manager

**Ken Castner**, Homer City Mayor

**Rachel Friedlander**, Seldovia City Manager

**Donna Aderhold**, Homer

**Michelle Williams**, Sterling

**Paul Ostrander**, Kenai City Manager

**Jim Glendenning**, Kenai

**Justin Ruffridge**, Soldotna

**Duane Bannock**, Kenai spoke in opposition to Ordinance 2021-40.

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

**Bjorkman moved to amend Ordinance 2021-40 as follows:**

Amend Section 1 Subsection A to read,  
"The planning commission shall consist of a maximum of [ELEVEN] fourteen 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."

Amend Section 1, subsection C to read,  
"C. Single Member District, Planning commissioners residing [FROM] outside of first class and home rule cities shall be appointed by the mayor and confirmed by the assembly and [MAY BE AS] representative of the following assembly districts [GEOGRAPHIC AREAS AS PRACTICAL]:

1. [EAST PENINSULA] Assembly District 1 - Kalifornsky;
2. [SOUTHWEST BOROUGH] Assembly District 2 - Kenai;
3. [ANCHOR POINT/NINILCHIK CLAM GULCH/KASILOF] Assembly District 3 - Nikiski;
4. [CLAM GULCH/KASILOF] Assembly District 4 - Soldotna;
5. [4.] [KALIFORNSKY BEACH] Assembly District 5 - Sterling/Funny River;
6. [5.] [RIDGEWAY] Assembly District 6 - East Peninsula;
7. [6.] [STERLING] Assembly District 7 - Central;
8. [7.] [NORTHWEST BOROUGH,.] Assembly District 8 - Homer;
9. Assembly District 9 - South Peninsula.

Planning Commissioners appointed to represent a district shall reside within that district. In the event that no qualified residents of a single member district apply to fill a vacancy for that district's seat, then that seat may be filled with a qualified resident of the Borough who resides outside of city limits. [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.]"

Add a new Section 2 to read, "Section 2. That the amendments to KPB 2.40.015 shall not affect current borough planning commissioners and shall only be applicable to a planning commissioner whose term begins after January 1, 2022."

**The motion to amend Ordinance 2021-40 carried by the following vote:**

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

**Cox Moved to amend Ordinance 2021-40 as follows:**

Section 1, subsection B to read, "Only [A] a city resident [MEMBER SERVING

ON A PLANNING COMMISSIONER] may serve on a city seat and shall be selected by the mayor from a list of recommendations submitted by the council."

**The motion to amend Ordinance 2021-40 carried by the following vote:**

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

**Elam moved to amend Ordinance 2021-40 as follows:**

Section 1, subsection D to read as follows: "D. All planning commission members shall be appointed to their expertise and knowledge of the community and shall represent the entire borough. An individual elected as a city council member or city mayor, may not serve in a concurrent dual service role on the borough's planning commission."

Assembly Members Cox and Hibbert spoke in opposition to the amendment.

Assembly member Derkevorkian spoke in support of the amendment.

**The motion to amend Ordinance 2021-40 failed by the following vote:**

**Yes:** 3 - Bjorkman, Derkevorkian, and Elam

**No:** 6 - Cox, Hibbert, Johnson, Chesley, Ecklund, and Tupper

**Elam moved to amend Ordinance 2021-40 as follows:**

Section 1 to add a new subsection E to read, "E. A vacancy or expiring term on the planning commission will be noticed for at least 30 days by the borough clerk's office. All applications to fill a vacancy or expiring term must be submitted through the borough clerk's office. Applications to fill a city seat shall be transmitted to the city clerk's office at the close of the application period."

Assembly Members Cox and Chesley spoke in opposition to the amendment.

**The motion to amend Ordinance 2021-40 carried by the following vote:**

**Yes:** 5 - Bjorkman, Hibbert, Johnson, Derkevorkian, and Elam

**No:** 4 - Cox, Chesley, Ecklund, and Tupper

**The motion to enact Ordinance 2021-40 as amended carried by the following vote:**

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

## UNFINISHED BUSINESS

## NEW BUSINESS

### 3. Other

[KPB-3711](#) Approving Amendments to the 2022 Assembly meeting schedule to

include travel to Seward in April and Homer in September (Ecklund)

Ecklund moved to amend the 2022 meeting schedule to read as follows:

"...April 19, 2022 (Seward)  
...September 20, 2022 (Homer)..."

Assembly Member Elam spoke in support of the amendment.

Assembly Member Hibbert spoke in opposition to the amendment.

**The motion to amend the 2022 travel schedule failed by the following vote:**

**Yes:** 3 - Chesley, Ecklund, and Tupper

**No:** 6 - Bjorkman, Cox, Hibbert, Johnson, Derkevorkian, and Elam

[KPB-3798](#) Confirming the Appointment to the Planning Commission (Mayor)

Michael Horton, Northwest Borough Seat, Term Expires July 31, 2023

**This appointment was withdrawn by assembly member Bjorkman due to the enactment of Ordinance 2021-40 with no objection.**

## MAYOR'S REPORT

[KPB-3757](#) Mayor's Report Cover Memo

1. Assembly Requests/Responses
2. Agreements and Contracts
  - a. [KPB-3758](#) Authorization to Award Contract for RFP22-007 Gravel Road Design to Nelson Engineering P.C., Kenai, Alaska.
  - b. [KPB-3759](#) Authorization to Award a Contract for RFP 22-006 Basargin Road Phase 3 Design to McLane Consulting Inc., Soldotna, Alaska.
  - c. [KPB-3760](#) Authorization to Award a Contract for RFP 22-008 Asphalt Road Design Poolside Avenue, Dkyline Drive, Chinulna Court to McLane Consulting Inc., Soldotna, Alaska.
  - d. [KPB-3761](#) Authorization to Award a Contract for RFP 22-005 Municipal Government Services and Tourism/Economic Development Public Relations Campaigns to Agnew Beck Consulting, Inc., Anchorage, Alaska.

- e. [KPB-3762](#) Authorization to Award a Contract for RFP 22-004 South Peninsula Hospital Facilities Plan to Architects Alaska, Anchorage, Alaska.
  - f. [KPB-3763](#) Authorization to Award a Contract for RFP22-001 Air Conditioning and Domestic Hot Water Professional Designs Services to PDC Engineers, Anchorage, Alaska.
  - g. [KPB-3764](#) Authorization to Award a Contract for ITB 22-022 Central Peninsula Hospital Door and Roof Ladder Project to HPM, Inc., Anchorage, Alaska.
  - h. [KPB-3765](#) Sole Source - Kenai Central High School Lockers to Vibetech.
  - i. [KPB-3766](#) Sole Source - Shop Wash/Melt Water Evaporator Tank to Totem Equipment and Supply.
  - j. [KPB-3767](#) Sole Source - Control System Operating System Upgrade, Multiple Sites to Siemens Industries.
  - k. [KPB-3768](#) Sole Source - Hope School Building Automation Control System Upgrade to Siemens Industries
  - l. [KPB-3769](#) Sole Source - Mt. View School Building Automation Control System Upgrade to Siemens Industries.
  - m. [KPB-3770](#) Sole Source - North Star School Building Automation Control System Upgrade to Siemens Industries.
3. Other
- a. [KPB-3771](#) Tax Adjustment Request Approval
  - b. [KPB-3772](#) Revenue - Expenditure Report - October 2021
  - c. [KPB-3773](#) Budget Revision - October 2021

## **PUBLIC COMMENTS AND PUBLIC PRESENTATIONS**

President Johnson called for public comment.

**Holly Sheldon Lee**, Talkeetna spoke in support of a judicial injustice Resolution.

**Ingrid Harrald**, Homer spoke in opposition to the vote on the amendment of the 2022 assembly meeting schedule.

**Laurel Lee**, spoke in support of Ordinance 2021-40 and a judicial injustice



Resolution.

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

## **ASSEMBLY COMMENTS**

Assembly Member Tupper stated the Kenai Peninsula Votes Organization and the Kenai Peninsula League of Women Voters held a forum on Thursday, December 9, 2021 from 6:00-7:00 pm. He also stated he would like to see another conversation regarding the assembly having out of town meetings.

Assembly Member Ecklund wished everyone safe and Merry Christmas and a happy new year.

Assembly Member Chesley encouraged the public to purchase a gun lock and practice gun safety in response to the most recent school shooting in Michigan. He wished everyone a happy holiday season.

Assembly Member Bjorkman stated he attended the Alaska Municipal League conference in November. He thanked everyone for their hard work on Ordinance 2021-40. He stated he would be introducing a Resolution regarding judicial injustice. He wished everyone a good evening.

Assembly Member Derkevorkian thanked the members of the community for their participation throughout the evening.

Assembly Member Cox stated that the Kenai Peninsula Economic Development District would hold their industry forum on January 6, 2022. He provided information on COVID-19 home tests. He wished everyone a good night.

Assembly Member Elam stated he attended the Alaska Municipal League conference in November. He thanked everyone for their hard work on Ordinance 2021-40.

Vice President Hibbert reminded people to be kind and patient this time of year. Congratulated President Johnson, the Assembly, the Clerk's Office and Administration for their hard work.

President Johnson wished everyone a Merry Christmas and a good evening.

## **PENDING LEGISLATION**

## **INFORMATIONAL MATERIALS AND REPORTS**

## **ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS**

1. January 4, 2022 Regular Assembly Meeting

6:00 PM Betty J. Glick Assembly Chambers, Borough Administration Building

Remote participation available through Zoom, Meeting ID: 884 7373 9641 Passcode: 671108

## **ADJOURNMENT**

With no further business to come before the assembly, President Johnson adjourned the meeting at 11:29 p.m.

I certify the above represents accurate minutes of the Kenai Peninsula Borough Assembly meeting of December 7, 2021.

\_\_\_\_\_  
Johni Blankenship, MMC, Borough Clerk

Approved by the Assembly: \_\_\_\_\_



# BOROUGH ASSEMBLY

KENAI PENINSULA ECONOMIC DEVELOPMENT  
DISTRICT

JANUARY 04, 2021





# KPEDD Overview



The Kenai Peninsula Economic Development District (KPEDD) is a private non-government resource focused on responsible/sustainable economic development for our region. Using a 30,000ft view of the economy, we locate financing and orchestrate community collaboration for economic planning and business incubation. We support infrastructure projects, workforce development and regional industries. KPEDD is funded by federal, state, regional and educational contracts.



# **KPEDD in collaboration with various regional stakeholders, are engaged in supportive efforts for the following EDA Proposed Project List**

- **Pratt Museum Outdoor Performance Theatre Pavilion- Homer, Alaska**
- **Tsalteshi Trails Association Maintenance Building and Parking Lot Upgrades- Soldotna, Alaska**
- **Moose Pass Chamber of Commerce- Upgrade and Enhancement to Visitor Historical Area- Moose Pass, AK**
- **Nikiski Senior Center- Trail Signage and Upgrade for Visiting Aging Population- Nikiski, AK**





# **KPEDD in collaboration with various regional stakeholders, are engaged in supportive efforts for the following EDA Proposed Project List**

- **City of Soldotna Waterfront Redevelopment Project**
- **City of Kenai Airport Commerical Opportunities Expansion**
- **City of Kenai- Bluff Erosion**
- **Alutiiq Pride- Chugach Regional Resources Commission- CRRC Indigenous NOFO Application for facility expansion**
- **City of Homer- HERC**
- **City of Seward- Dock Electric**





## EDA Build Back Better Application- Alaska Mariculture Cluster

### Project Narrative & Coalition Vision:

"Develop a viable and sustainable mariculture industry introducing shellfish and aquatic plants for the long-term benefit of Alaska's economy, environment, and communities."

- Goal is to grow a \$100 million per year mariculture industry in 20 years



Southeast Conference



# 1 of 60 Nationwide Finalists



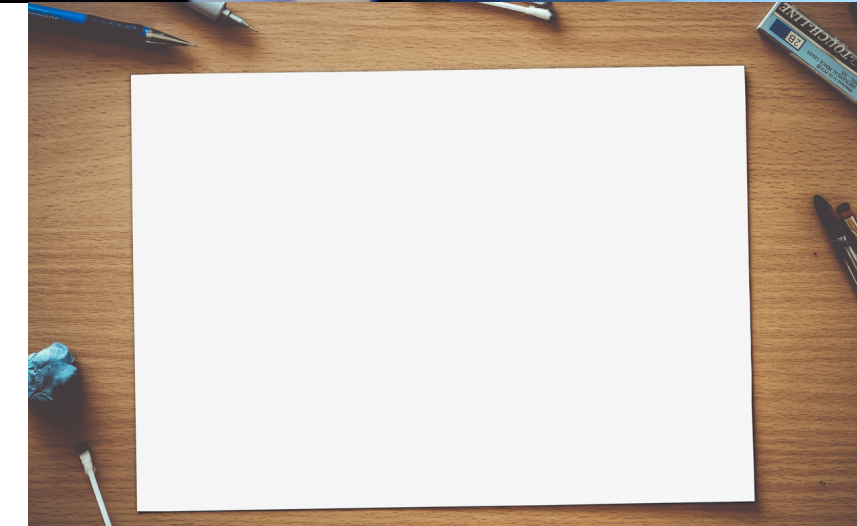




## KPEDD Economic Resiliency Plan



## KPEDD Financial Resiliency Tool Kit

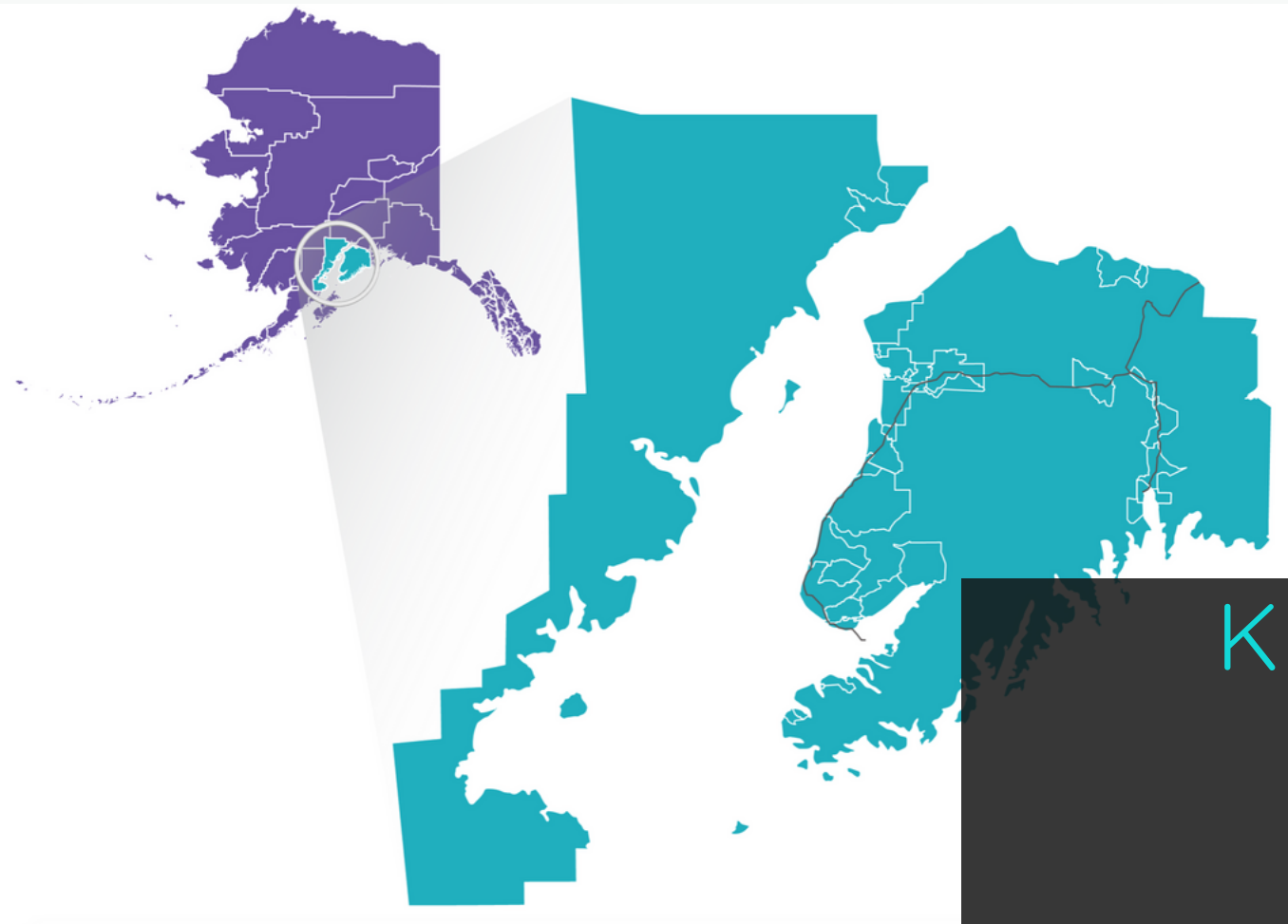


**Topics include: Business licenses, deposits, finance, operations**



# KPEDD 2022

## INDUSTRY OUTLOOK FORUM



### KENAI VISITORS' CENTER

JANUARY 6TH, 2022

8:15AM-3:40PM

11471 KENAI SPUR HWY,  
KENAI, AK 99611

**REGISTER HERE:**

[HTTPS://FORMS.GLE/BKX83NDHOM878W22A](https://forms.gle/BKX83NDHOM878W22A)

FOR QUESTIONS PLEASE CONTACT CAITLIN CORESON AT  
CAITLIN@KPEDD.ORG



# FOLLOW US ON SOCIAL MEDIA!

Instagram: @kenaipeninsulaedd

Facebook : Search KPEDD or  
@kenaipeninsulaedd

Linkedin: KENAI PENINSULA ECONOMIC  
DEVELOPMENT DISTRICT INC





# NATIVE ECONOMIC FUTURE FORUM

APRIL 28TH, 2022

CHALLENGER CENTER

KENAI, ALASKA





Tim Dillon  
Executive Director

[tim@kpedd.org](mailto:tim@kpedd.org)

(907) 242-9709

[www.kpedd.org](http://www.kpedd.org)

[www.kenaipeninsulaworkforce.org](http://www.kenaipeninsulaworkforce.org)



# Thank You





# Homer Port & Harbor Expansion Project

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12/29/2021

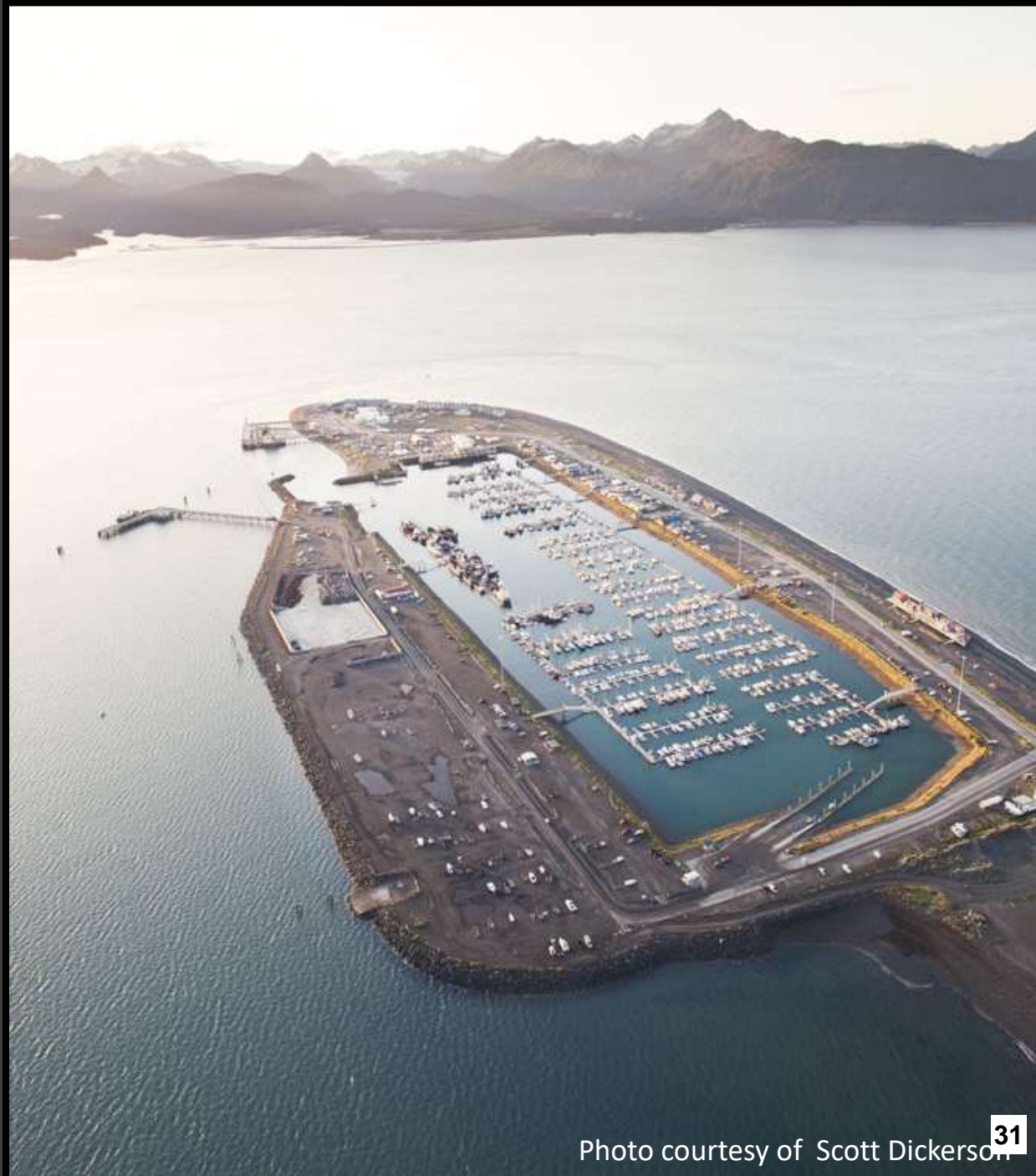


Photo courtesy of Scott Dickerson

# THE NEED FOR EXPANSION

Homer Harbor's  
System 5  
large vessel float







Homer's large vessel fleet has grown by 42% in the last 15 years and the length of vessels requesting moorage has doubled, filling the harbor beyond capacity.



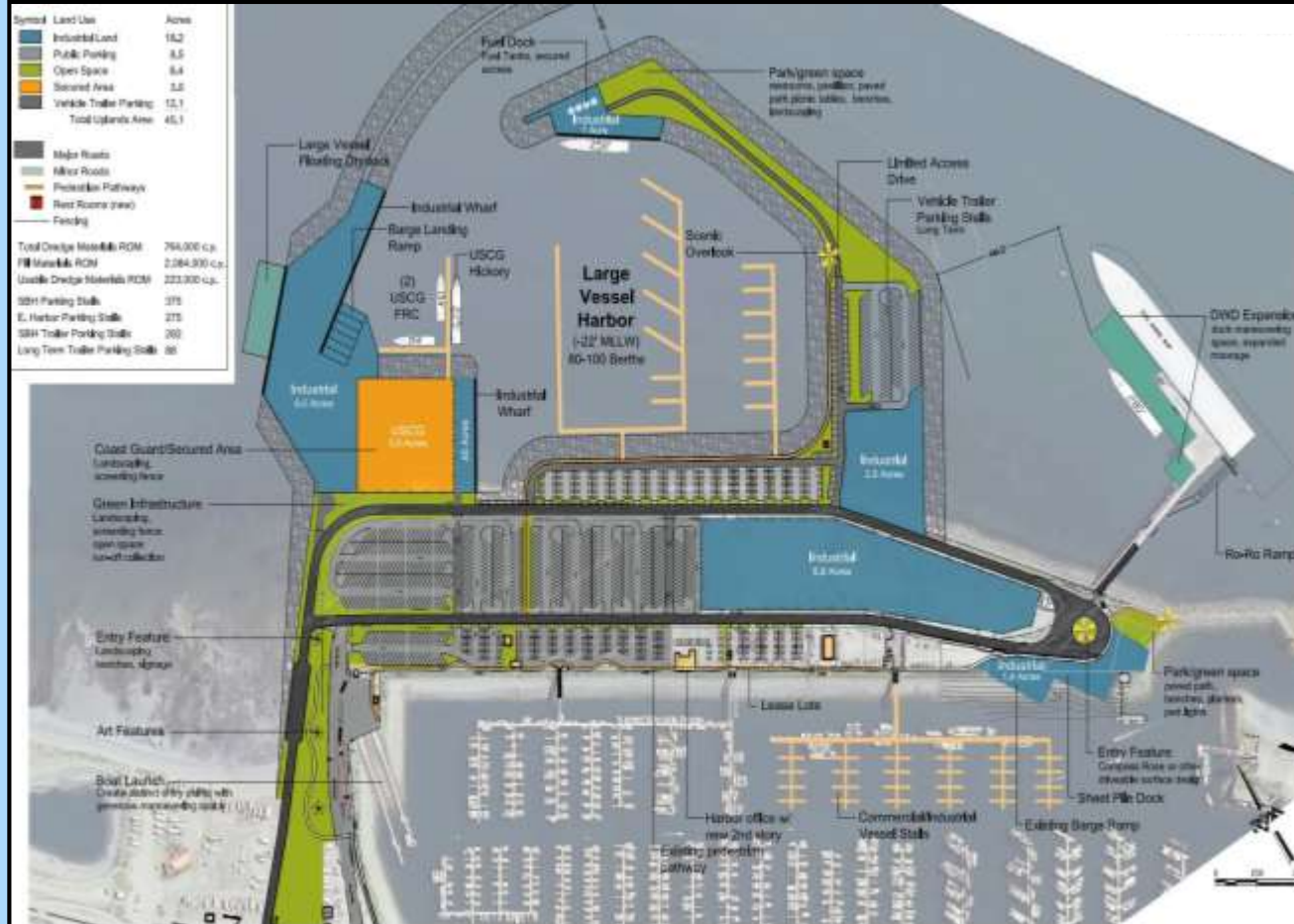
# WHERE WE ARE IN THE PLANNING PROCESS

Completed a Planning Assistance for States Contract with USACE in 2019, which

- Quantified construction costs and regional economic benefits, and
- Identified that conditions warrant completion of a New Start General Investigation.

Outcome: **Preliminary Benefit Cost Ratio (BCR) of 0.9 to 1.0** citing:

**Construction cost savings** – local armor rock and dredged materials plan.



## Economic benefits:

Supports regional jobs by an estimated \$2.75 million annually;

Captures an estimated \$3.5 million in economic activity that the region loses annually due to lack of moorage for layover, provision, maintenance and over-winter for marine industrial vessels;

Backup port for marine transportation & delivery in the event a major disaster disables Port of Alaska.

The adverse economic impacts of **doing nothing carries a present LOSS value TO THE STATE of \$93 million over a 50-year period.**

We can't afford to NOT continue in partnership on this project.



## ALASKA IS DIFFERENT!

According to NOAA coastal mapping, there are 95,471 miles of coastline in the U.S. and 33,904 of those miles are in Alaska.

There are 42 municipal Ports and Harbors in AAHPA and 7 of those are road connected:

- Haines
- Skagway
- Valdez
- Whittier
- Seward
- Homer
- Anchorage

# Alaska Association of Harbormasters & Port Administrators



Of the 42 member harbors in AAHPA,  
7 are road-connected: Haines, Skagway, Valdez, Whitter, Seward, Homer, and Anchorage ---  
only two of those have a natural shelf that allow harbor basin expansion:



Valdez completed a harbor expansion in 2019  
and **is already at capacity again.**



The General Investigation of Homer's port expansion will produce a positive BCR

- Verifying that this project is competitive on a national scale and
- Providing the planning and development work needed to proceed with shovel ready plans and federal funding for construction



# THE NEXT STEP

**A KPB Resolution or Assembly letter to State of Alaska supporting the project and Requesting the to State Pledge \$750,000 over the next three years to launch and complete an ACOE General Investigation of Homer's Port Expansion.**







**Thank you**

**Bryan Hawkins, Harbormaster**  
**[bhawkins@ci.homer.ak.us](mailto:bhawkins@ci.homer.ak.us)**  
**907-235-3160**



# CITY OF HOMER PORT & HARBOR LARGE VESSEL HARBOR EXPANSION



This Project constructs a new multi-modal large vessel port on the North side of Homer's existing Small Boat Harbor. A natural shelf and local source of rock makes construction of a port basin with 40-60 large vessel slips for home port vessels, transit moorage for visiting vessels, a commercial barge loading ramp, vessel haul-out facilities, fueling facilities, loading dock, and secure homeport and layover accommodations for US Coast Guard assets feasible. Homer's central, road-connected location, renowned marine tradesmen and ice free conditions make it an ideal location.

## THE NEED

Homer's large vessel fleet has grown by 42% in the last 15 years and the length of vessels requesting moorage has doubled, filling the harbor beyond capacity. Many large vessels are turned away and travel to the Lower 48 to overwinter and complete maintenance. This comes with significant operating costs for Alaska's marine industrial fleet and significant job and revenue losses for the region.

Due to shortage of moorage space and high demand, large vessels are rafted two and three abreast in Homer Harbor causing costly travel delays for the fleet and increased maintenance and repair costs for our systems working beyond capacity. Travel lanes are constricted and traffic congested which presents navigational hazards, especially when small private boats are sharing tight travel lanes.

Port expansion will meet market demands of the marine industrial transportation sector, address navigational hazards and capture economic opportunities currently being lost while simultaneously advancing Alaska's (and the nation's) competitive position. This project will positively impact the lives and livelihoods of countless Alaskans through job creation, economic development and benefit national security interests well into the future.

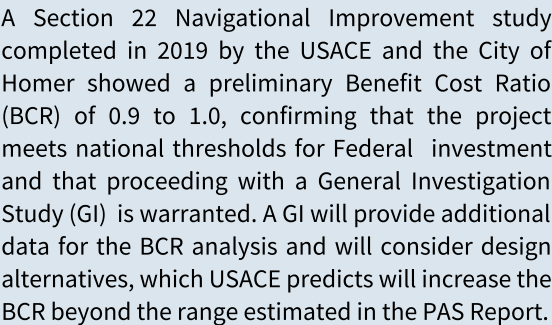
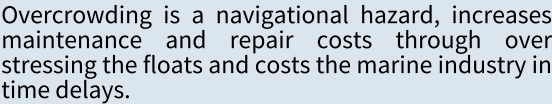
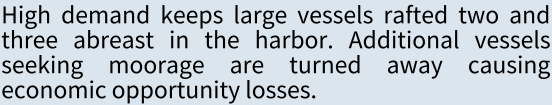
## HOMER LARGE VESSEL PORT EXPANSION WILL

- Increase regional economic activity and support local jobs by an estimated \$2.75 million annually;
- Provide layover, provision, maintenance and over-winter options to marine industrial vessels to capture an estimated \$3.5 million lost annually due to Alaska's lack of moorage space;
- Support and advance national security interests, particularly by accommodating layover, repair and provisioning needs of US Coast Guard ships deployed under the Arctic Security mission;
- Serve as a backup port for marine transportation & delivery critical for Alaska's resilience and recovery in the event a major disaster disables the Port of Alaska.

---

**OVER A 50-YEAR PERIOD  
THE COST OF DOING NOTHING  
CARRIES A PRESENT DAY VALUE  
OF \$93 MILLION**





## INVESTMENT

Based on the positive results, the USACE recommends advancing this project by completing a \$3 million General Investigation feasibility study (GI). Project costs would be shared under a three-way partnership: 50% Federal, 25% State, 25% City of Homer.

The City and USACE have formally expressed intent to fund the GI.

**Ordinance 20-06, adopted by Homer City Council on Feb 10, 2020 commits the City's share by appropriating \$750,000 from the General Fund Balance.**

USACE Col. Delarosa ranked Homer Port Expansion as Alaska's #1 budget priority for new starts in their Federal budget request.

**Alaska's Congressional delegation supports the project; they sent a letter to the US Department of the Army requesting project funding from the recently enacted Infrastructure Investment and Jobs Act and Federal authorization to begin the new start GI.**

**The City has formally requested that the State of Alaska Department of Transportation rejoin the project partnership originally formed in 2007.**

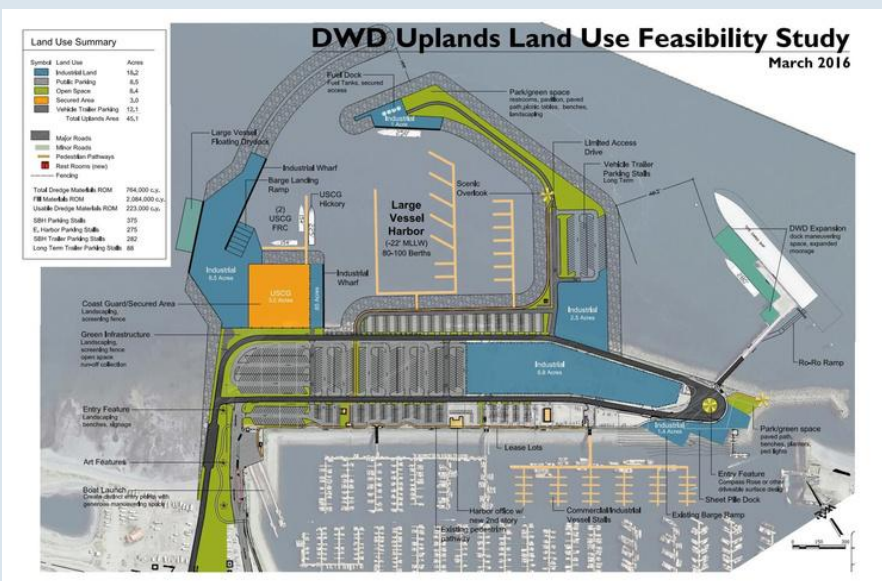
**State partnership includes contributing \$250,000 per year for the three-year GI study and providing expertise and input on design and construction.**

Once completed, the GI provides all the economic, environmental, geophysical, and engineering analysis necessary to develop a final cost to benefit ratio (BCR) and brings the project to shovel-ready.

Inclusion in a State G.O. Bond package and the Federal infrastructure bill could provide important construction funds.

Momentum on this project is great and now is the time to capture economic opportunities currently being lost while simultaneously advancing Alaska's competitive maritime position.

Combined, our agencies' strengths and expertise can propel this project through feasibility to completion.





## ALIGNMENT WITH REGIONAL TRANSPORTATION GOALS

Port infrastructure expansion is recognized as an economic opportunity regionally, as it provides opportunity for increased industrial access and business development. Homer's port expansion project aligns with economic resiliency goals in the Kenai Peninsula Borough Comprehensive Development Strategy and fills a goal in Homer's Comprehensive Plan to enhance and protect our critical role in regional marine transportation and improve traffic flow and safety on the Homer Spit.

**Kenai Peninsula Borough 2021-2026 Comprehensive Economic Development Plan**  
Goal 3 of the CEDS, Infrastructure and Land Use prioritizes Homer's large vessel port expansion as a means to create resilient, industry-focused transportation infrastructure that also helps attract and retain a qualified workforce.

**Homer Comprehensive Plan 2018 Goals and Objectives for Public Services & Facilities:** Continue to develop the infrastructure and services of the Port and Harbor in order to improve its position as an important regional port and harbor facility.

**Homer's Capital Improvement Plan 2022-2027:** The Port Expansion is again the #1 priority capital project in the City of Homer Capital Improvement Plan as established by Homer City Council Ordinance 21-059. The public also ranked the project as the #1 recommendation to City Council after an extensive public comment period. This underscores the importance port expansion project to the Homer community.



### **CITY OF HOMER**

491 E. Pioneer Avenue  
Homer, AK 99603

### **City Manager**

Rob Dumouchel, 907-435-3102  
rdumouchel@ci.homer.ak.us

### **Port Director/Harbormaster**

Bryan Hawkins, 907-435-3157  
bhawkins@ci.homer.ak.us

### **PORT OF HOMER - the largest single-basin harbor in Alaska supports:**

- 1,000 docked vessels with 414 additional vessels on a waiting list
- 200+ vessels launching per day from load and launch ramp
- 2nd highest count of commercial fishing vessels & 4th highest volume of halibut and sablefish landings Statewide
- Alaska Marine Highway System and Kachemak Bay Ferry
- Two USCG Cutters and support facilities
- 50 charter companies operating one of the largest fleets in the State
- 100,000 anglers annually, the largest population for a coastal location in Alaska
- Increased cruise ship visits: 4 in 2013; 14 in 2019

**Data shows that marine activity in the region continues to increase.**



# Congress of the United States

## Washington, DC 20515

December 13, 2021

Mr. Michael Connor  
Assistant Secretary of the Army for Civil Works  
Office of the Under Secretary of the Army  
United States Department of the Army  
108 Army Pentagon  
Washington, DC 20310

Assistant Secretary Connor:

We are writing to express our support for the City of Homer's request for \$1.5 million for a new start General Investigation (GI) study to analyze the expansion of Homer's existing port and harbor. The City of Homer has committed \$750,000 in local cost share and the City has requested \$750,000 from the State of Alaska to complete the \$3 million, three-year GI study. The recently enacted Infrastructure Investment and Jobs Act (IIJA) provided supplemental appropriations to the U.S. Army Corps of Engineers (USACE) and directed the Army Corps to develop a work plan for the use of the funds within 60 days of enactment. We view this as an opportunity to make you aware of the merits of this project.

The City of Homer and the USACE recently completed a six-month high-level Planning Assistance to States (PAS) study that examined the project's feasibility. The preliminary Benefit Cost Ratio (BCR) of 0.9 to 1.0 confirmed that proceeding with a GI is warranted. The GI will complete all of the economic, environmental, geophysical, and engineering analysis necessary to develop a full BCR.

Centrally located in the Gulf of Alaska, Homer's multi-modal port is a marine industrial and transportation hub for Central and Western Alaska. Originally covering 16 acres when constructed in 1965, the city expanded the harbor to 50 acres in 1986 to meet commercial demand. Homer continues to see increasing demand for harbor use as the city has increasingly become a maritime commercial and transportation hub for the region. The GI is the first step toward constructing a purpose-built large vessel harbor.

Over the last 15 years, large vessel traffic in the harbor has grown 42 percent and the length of vessels requesting moorage has doubled. That growth trend appears to be continuing. The harbor hosts the second highest count of commercial fishing vessels in the state, over 50 maritime charter companies, and Alaska Marine Highway vessels. Currently, there is a 414-vessel waiting list and due to space constraints, large vessels are rafted two to three abreast in the harbor. The impacts of the vessel overcrowding include transit delays and increased maintenance and repair costs for the float systems. Additionally, vessel traffic lanes are congested, which presents navigational hazards, especially when small private boats are sharing travel lanes.

Due to lack of space, many large vessels must travel to the Lower 48 for the winter to complete maintenance, which is estimated to cost the region an estimated \$3.5 million in economic opportunity losses to the fleet annually and \$2.75 million annually in local job opportunity losses. The large vessel harbor expansion project would alleviate the space constraints the harbor currently experiences posing mutually beneficial solutions for the large and small vessel fleets.

The project will be designed to support multi-modal cargo operation allowing it to serve as a backup port in the event of a major disaster at the Port of Alaska. As the region's only ice-free gateway to Cook Inlet, the harbor also serves as a port of refuge for large vessels transiting the Gulf of Alaska, Cook Inlet, and Kennedy Entrance.

Additionally, the Homer harbor has the potential to accommodate layover, repair, and provisioning needs of U.S. Coast Guard (USCG) ships deployed under the Arctic Security mission and a level 3 Ports, Waterways, and



Coastal Security station. This station has been proposed by USCG District 17 staff to safeguard critical facilities including the Tesoro Refinery, Cook Inlet Natural Gas Storage Facility, Nikiski Industrial Complex, and the entrance to Port of Alaska, Alaska's only DOD designated strategic seaport.

The PAS estimated that over a 50-year period the cost of doing nothing carries a present-day value of \$93 million. Homer's port expansion would meet the growing market demands of the marine industry, address navigational hazards, and capture new economic opportunities. The project will positively impact the lives and livelihoods of thousands of Alaskans through job creation, economic development, and strengthened national security well into the future.

Consistent with all applicable law, policy, and guidance, we respectfully request that you give due consideration to the City of Homer's request and all Alaskan funding requests. We also ask that you keep our offices apprised on the outcome.

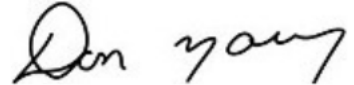
Sincerely,



LISA MURKOWSKI  
United States Senator



DAN SULLIVAN  
United States Senator



DON YOUNG  
Congressman for All Alaska

Introduced by:	Mayor
Date:	12/07/21
Hearing:	01/04/22
Action:	Enacted as Amended
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2021-19-30**

**AN ORDINANCE ACCEPTING AND APPROPRIATING THE REMAINING  
BALANCE OF \$255,854.84 FROM THE U.S. DEPARTMENT OF HOMELAND  
SECURITY'S STAFFING FOR ADEQUATE FIRE AND EMERGENCY RESPONSE  
GRANT, AND APPROPRIATING \$5,117.10 FOR THE ADMINISTRATIVE FEE ON  
BEHALF OF WESTERN EMERGENCY SERVICE AREA**

**WHEREAS,** the Western Emergency Service Area ("WESA") is committed to recruiting new volunteer firefighters and retaining existing members in order to best protect and serve the service area; and

**WHEREAS,** the U.S. Department of Homeland Security ("DHS") provides an annual application through the Assistance to Firefighters, "Staffing for Adequate Fire and Emergency Response" grant (SAFER), which assists fire departments with funding for operations and safety; and

**WHEREAS,** the Ninilchik Emergency Services was the original recipient of the 2018 SAFER award in the amount of \$298,650 to promote recruitment and retention of volunteer firefighters; and

**WHEREAS,** DHS approved the amendment request transferring the \$255,854.84 balance of the 2018 SAFER grant to WESA; and

**WHEREAS,** pursuant to Resolution 2013-022 an administrative fee of 2% of the grant amount will be charged to the service area for "grants and projects that do not allow an indirect cost to be charged" and is available in the WESA fund balance; and

**WHEREAS,** at its regularly scheduled meeting held January 13, 2021, the WESA Board recommended grant acceptance; and

**WHEREAS,** it is in the best interest of the borough to receive these funds for the purpose of completing the SAFER program objectives;

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

**SECTION 1.** The mayor is authorized to accept a grant from the U.S. Department of Homeland Security in the amount of \$255,854.84 for promoting the recruitment and retention of volunteer firefighters in Western Emergency Service Area, and is authorized to execute a grant agreement and any other documents deemed necessary to accept and expend the grant funds and to fulfill the intent and purpose of this ordinance.

**SECTION 2.** That funds in the amount of \$260,971.94 are appropriated as follows:


\$255,854.84 to account number 209.51410.SAFR2.49999 project account number for the SAFER grant program; and

\$5,117.10 from the WESA Operating Fund fund balance account number 209.27910 to account 209.51410.SAFR2.61990 for the administrative service fee account.


**SECTION 3.** That due to the length and nature of this project, the appropriations established through this ordinance shall not lapse at the end of any particular fiscal year.

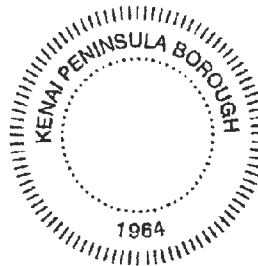
**SECTION 4.** This ordinance shall become effective retroactively on October 26, 2021.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 4TH DAY OF JANUARY, 2022.**

  
Brent Johnson, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



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

No: None

Absent: None

## Kenai Peninsula Borough Community & Fiscal Projects

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### MEMORANDUM

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

**THRU:** Charlie Pierce, Mayor *CP*  
Brandi Harbaugh, Finance Director *BH*  
Jon Marsh, WESA Fire Chief *JM*

**FROM:** Rachel Chaffee, Community & Fiscal Projects Manager *RC*

**DATE:** December 22, 2021

**SUBJECT:** Amendment to Ordinance 2021-19-30, Accepting and Appropriating the Remaining Balance of \$255,854.84 from the U.S. Department of Homeland Security's Staffing for Adequate Fire and Emergency Response Grant, and Appropriating \$5,117.10 for the Administrative Fee on Behalf of Western Emergency Service Area (Mayor)

---

The granting agency, upon acceptance of the Kenai Peninsula Borough receiving the funds for utilization on behalf of the Western Emergency Service Area, allows for expenditures that occur on or after October 26, 2021. Amending Section 4 of Ordinance 2021-19-30 to provide for a retroactive effective date will enable the Borough to apply qualified expenditures towards the grant amount.

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

➤ Amend Section 4, as follows:

**SECTION 4.** This ordinance shall become effective [~~IMMEDIATELY UPON ENACTMENT~~] **retroactively on October 26, 2021.**

Your consideration of this amendment is appreciated.



# Kenai Peninsula Borough

## Western Emergency Service Area

### MEMORANDUM

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

**THRU:** Charlie Pierce, Mayor *CP*  
Brandi Harbaugh, Finance Director *BH*  
Brenda Ahlberg, Community & Fiscal Projects Manager *BA*

**FROM:** Jon Marsh, WESA Fire Chief *JM*

**DATE:** November 23, 2021

**SUBJECT:** Ordinance 2021-19-30, Accepting and Appropriating the Remaining Balance of \$255,854.84 from the U.S. Department of Homeland Security's Staffing for Adequate Fire and Emergency Response Grant, and Appropriating \$5,117.10 for the Administrative Fee on Behalf of Western Emergency Service Area (Mayor)

Western Emergency Service Area (WESA) depends heavily on volunteers to adequately and safely respond to incidents. The volunteers are crucial to WESA in providing safe responses to incidents. The Homeland Security's Staffing for Adequate Fire and Emergency Response grant award will fund a recruitment and retention program that will seek to increase recruitment of new volunteer firefighters and find ways to keep current members engaged in a long-term relationship with our department.

The grant performance period ends December 9, 2023 and provides reimbursable funding in categories such as personal protection equipment for new recruits, money for training and salary for a recruitment and retention coordinator; these duties will be assigned to a current employee. It is the goal of WESA to have established a successful recruitment and retention program that is fully integrated within departmental policy by the end of the grant performance period.

Funds are available in the Service Area's fund balance to meet the 2% administrative fee. The Service Area Board met on January 13, 2021, and unanimously approved acceptance of this grant and renewed its commitment to increase staffing at single firefighter stations. The WESA Fire Chief shall provide grant oversight and project completion.

Attachment: DHS award letter

FINANCE DEPARTMENT FUNDS/ACCOUNT VERIFICATION	
Acct. No: 209.27910	Amount \$5,117.10
Acct. No. 209.51410.SAFR2.49999	Amount \$N/A
By: <i>CJ</i>	Date: 11/22/2021

## Award Letter

U.S. Department of Homeland Security  
Washington, D.C. 20472

Effective date: 09/11/2019



David Bear  
KENAI PENINSULA BOROUGH (INC)  
DBA KENAI PENINSULA BOROUGH 144 N BINKLEY ST  
SOLDOTNA, AK 99669  
EMW-2018-FF-00203

Dear David Bear,

Congratulations on behalf of the Department of Homeland Security. Your application submitted for the Fiscal Year (FY) 2018 Staffing for Adequate Fire and Emergency Response (SAFER) Grant funding opportunity has been approved in the amount of \$298,650.00 in Federal funding.

Before you request and receive any of the Federal funds awarded to you, you must establish acceptance of the award through the FEMA Grants Outcomes (FEMA GO) system. By accepting this award, you acknowledge that the terms of the following documents are incorporated into the terms of your award:

- Summary Award Memo - included in this document
- Agreement Articles - included in this document
- Obligating Document - included in this document
- 2018 SAFER Notice of Funding Opportunity (NOFO) - incorporated by reference

Please make sure you read, understand, and maintain a copy of these documents in your official file for this award.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bridget Bean", is written over a light blue horizontal line.

Bridget Bean  
Assistant Administrator  
Grant Programs Directorate

Introduced by:	Mayor
Date:	03/19/13
Action:	Adopted
Vote:	6 Yes, 0 No, 3 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2013-022**

**A RESOLUTION MAKING CHANGES TO THE BOROUGH'S COST ALLOCATION  
PLAN FOR CAPITAL PROJECTS**

**WHEREAS,** Resolution 2006-036 established a cost allocation plan using an indirect rate that charge service areas, grants and capital projects a fee for intergovernmental services that were provided by the borough's General Fund; and

**WHEREAS,** the services provided include, but are not limited to: processing of payroll, purchasing, accounts payable, cash receipts, cash disbursements, cash management, grant management, real and personal property valuation, tax billing and collection, miscellaneous billing and collection, legal services, and computer support services; and

**WHEREAS,** the assembly in FY10 eliminated the charge to service areas and the current indirect rate being charged to grants and capital projects is 3.04 percent; and

**WHEREAS,** for large capital projects and capital equipment purchases, the rate being charged can generate cost recovery in excess of the costs that were incurred; and

**WHEREAS,** allowing a reduced indirect rate on capital projects and capital equipment is more reflective of the time and cost incurred for these projects;

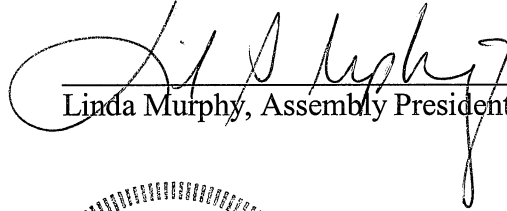
**NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:**

**SECTION 1.** The indirect rate for capital projects less than \$500,000 shall be 2 percent of the project budget and the indirect rate for capital projects \$500,000 or greater shall be 1 percent.

**SECTION 2.** The indirect rate for capital equipment purchases less than \$500,000 shall be 1 percent of the project budget and the indirect rate for capital equipment purchases \$500,000 or greater shall be 0.5 percent.

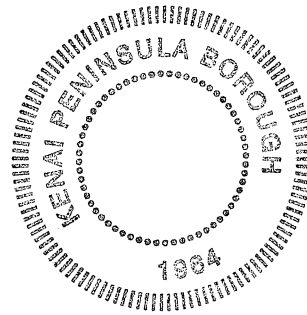
**SECTION 3.** That this resolution takes effect retroactive to January 1, 2013.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 19TH DAY OF MARCH, 2013.**

  
Linda Murphy, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



Yes: Haggerty, Johnson, Pierce, Smith, Wolf, Smalley  
No: None  
Absent: McClure, Murphy, Tauriainen



Introduced by:	Mayor
Date:	12/07/21
Hearing:	01/04/22
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2021-19-31**

**AN ORDINANCE APPROPRIATING \$770,164 TO THE SOUTH BEND BLUFF  
ESTATES ROAD IMPROVEMENT SPECIAL ASSESSMENT DISTRICT**

- WHEREAS,** KPB Chapter 14.31 provides authority for creating and financing road improvement assessment districts for improvements to roads in public rights-of-way; and
- WHEREAS,** a petition has been received requesting the formation of a special assessment district for paving improvements for South Bend Bluff Estates located off of Ciechanski Road; and
- WHEREAS,** the assembly will consider a resolution on January 4, 2022 to form the South Bend Bluff Estates Road Improvement Assessment District (“RIAD”) and proceed with the improvement; and
- WHEREAS,** KPB 14.31.070(D) requires signatures of the owners of more than 60 percent of the parcels within the proposed district sign the petition, and 78.43 percent have signed the petition; and
- WHEREAS,** KPB 14.31.070(D)(b) requires signatures of the owners of at least 60 percent in value of the property to be benefited and 84.15 percent have signed the petition; and
- WHEREAS,** the Road Service Area Board adopted RSA Resolution 2021-06 to fund a 50 percent match of \$385,082 from the RIAD Match Fund; and
- WHEREAS,** financing is necessary to complete the administrative requirements of the ordinance and regulations; and
- WHEREAS,** pursuant to KPB 5.10.040(A)(13) the borough may invest in special assessment districts; and
- WHEREAS,** the estimated total cost of the project of \$770,164 less the 50 percent Road Service Area match of \$385,082 is to be provided as an investment by the General Fund (\$385,082) which will be repaid with interest by assessments on the parcels within the district; and

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

**SECTION 1.** That the amount of \$385,082 is appropriated from the General Fund fund balance account number 100.27910 to be transferred to account number 841.94912.SBEND.49999 for the South Bend Bluff Estates RIAD.


**SECTION 2.** That the special assessment fund shall repay to the General Fund the full amount invested by the General Fund with interest though payments made on the special assessments levied.

**SECTION 3.** That the amount of \$385,082 is appropriated from the Road Service Area RIAD Match Fund fund balance account number 238.27910 to be transferred to the South Bend Bluff Estates Special Assessment Fund account number 841.94912.SBEND.49999.

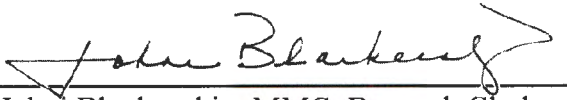
**SECTION 4.** That the appropriations made in this ordinance are of a project length nature and as such do not lapse at the end of any particular fiscal year.

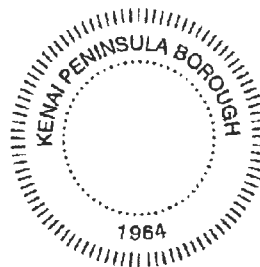
**SECTION 5.** That this ordinance shall become effective immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 4TH DAY OF JANUARY, 2022.**

  
Brent Johnson, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



Yes: Bjorkman, Chesley, Cox, Derkevorkian, Ecklund, Elam, Hibbert, Tupper, Johnson  
No: None  
Absent: None

## Kenai Peninsula Borough Finance Department

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### MEMORANDUM

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

**THRU:** Charlie Pierce, Borough Mayor *CP*

**FROM:** Brandi Harbaugh, Finance Director *BH*

**DATE:** November 23, 2021

**RE:** Ordinance 2021-19 31 Appropriating \$770,164 to the South Bend Bluff Estates Road Improvement Special Assessment District (Mayor)

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A petition has been received requesting the formation of a special assessment district for paving improvements for South Bend Bluff Estates located off Ciechanski Road. The petition process is the first step to establish a road improvement special assessment district. A resolution to authorize the formation of the South Bend Bluff Estates Road Improvement Assessment District ("RIAD") is scheduled to come before the assembly on January 4, 2022.

The second step in the process is this ordinance that will appropriate the necessary funds should the assembly adopt the resolution to form the RIAD. The hearing on this ordinance is scheduled for the January 4, 2022 assembly meeting to coincide with the formation resolution.

The final step of this process will be an ordinance of assessment following the completion of the project.

In order for the assembly to consider the formation, KPB 14.31.070(D) requires petition signatures of at least 60% of the owners of record of the parcels subject to assessment in the proposed RIAD; and, the signatures of owners of at least 60% in value of the property to be benefited. Owners of 78.43% of the parcels within the proposed RIAD and owners of record of 84.15% in value of the property to be benefited have signed the petition.

The total cost of the South Bend Bluff Estates RIAD is estimated to be \$770,164. This ordinance appropriates \$770,164 to the assessment fund with 50% (\$385,082)

November 23, 2021

Page -2-


Re: 2021-19- 31

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provided as an interfund loan from the borough General Fund and a 50% match of \$385,082 from the Road Service Area RIAD Match Fund.

On September 14, 2021, the Road Service Area board adopted Resolution 2021-06 to fund the 50% match. The loan will be repaid through assessments levied on property located within the RIAD that may be paid in ten annual installments. Billings will include an interest charge equal to the published prime rate in effect at the time of the loan plus 2%. The prime rate is currently 3.25%. If it remains unchanged through project completion, residents of the RIAD will be charged an interest rate of 5.25% (3.25% + 2%). This is the same formula used to determine the rate of interest on the interfund loans used to finance the other USAD and RIAD projects. Early payments can be made without penalty.

If for any reason the RIAD is not formed, the loan will not be made and the General Fund will absorb any administrative costs that exceed the \$1,000 filing fee received with the petition.

FINANCE DEPARTMENT ACCOUNT / FUNDS VERIFIED	
Acct. No.	<u>100.27910</u>
Amount:	<u>\$385,082</u>
Acct. No.	<u>238.27910</u>
Amount	<u>\$385,082</u>
	
By: _____	Date: <u>11/22/2021</u>

Introduced by:	Mayor
Date:	12/07/21
Hearing:	01/04/22
Action:	Enacted as Amended
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2021-19-32**

**AN ORDINANCE ACCEPTING AND APPROPRIATING FUNDING FROM THE  
STATE OF ALASKA IN THE AMOUNT OF \$153,940.61 FOR THE HEALTHY AND  
EQUITABLE COMMUNITIES PROGRAM, A FEDERAL PASS-THRU AWARD  
UNDER THE CENTERS FOR DISEASE CONTROL AND PREVENTION**

**WHEREAS,** the Alaska Department of Health and Social Services has notified municipalities of funding through the “Healthy and Equitable Communities Program” that is a federal pass-thru program under the Centers for Disease Control and Prevention ; and

**WHEREAS,** the borough was notified of a grant in the amount of \$153,940.61 that may be used to assist COVID-19 testing and recovery activities; and

**WHEREAS,** the grant stipulates that \$53,940.61 must be subawarded to the Kenai Peninsula Homeless Coalition to support homelessness facilities; and

**WHEREAS,** it is in the best interest of the borough to accept the grant to help defray costs resulting from the impacts of the coronavirus pandemic; and

**WHEREAS,** the Kenai Peninsula Borough is not in a state of emergency and approval of the assembly is prudent for spending any federal grant or COVID-19 related funding;

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

**SECTION 1.** That the mayor is authorized to accept the Healthy and Equitable Communities Program award in the amount of \$153,940.61 from the State of Alaska for testing and recovery activities based upon COVID-19 impacts.

**SECTION 2.** That the mayor is authorized to execute any documents deemed necessary to accept and expend the funds and to fulfill the intents and purposes of this ordinance.

**SECTION 3.** That the mayor is authorized to distribute \$53,940.61 to the Kenai Peninsula Homeless Coalition to support homelessness facilities from the Healthy and Equitable Communities Program award from the State of Alaska.



**SECTION 4.** That any use of the remaining \$100,000.00, which is the balance of the award from the State of Alaska under this program after \$53,940.61 is distributed to the Kenai Peninsula Homeless Coalition, shall be subject to assembly approval.

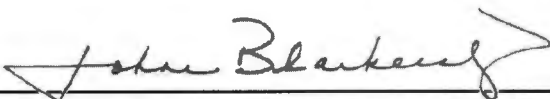
**SECTION 5.** That the federal pass-thru funds in the amount of \$153,940.61 are appropriated to account 271.94910.22VAC.49999, contingent upon actual award amount.

**SECTION 6.** This ordinance shall become effective immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 4TH DAY OF JANUARY, 2022.**

  
Brent Johnson, Assembly President

ATTEST:


  
John Blankenship, MMC, Borough Clerk



Yes: Bjorkman, Chesley, Cox, Derkevorkian, Ecklund, Elam, Hibbert, Tupper, Johnson  
No: None  
Absent: None

**MEMORANDUM**

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

**FROM:** Tyson Cox, Assembly Member  for Tyson Cox

**DATE:** January 4, 2022

**RE:** Amendments to Ordinance 2021-19-32, Accepting and Appropriating Funding from the State of Alaska in the Amount of \$153,940.61 for the Healthy and Equitable Communities Program, a Federal Pass-Thru Award under the Centers for Disease Control and Prevention (Mayor)

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[Please note the bold underlined language is new.]

- Amend the fourth whereas clause, as follows:

**WHEREAS,** it is in the best interests of the borough to accept the balance of the award in the amount \$167,897.40 and to subaward these funds to South Peninsula Hospital to help defray costs resulting from the impacts of the coronavirus pandemic; **and**

- Add a fifth whereas clause, as follows:

**WHEREAS, the Kenai Peninsula Borough is not in a state of emergency and approval of the assembly is prudent for spending any federal grant or COVID-19 related funding;**

- Add a new Section 3, as follows:

**SECTION 3. That the mayor is authorized to distribute \$53,940.61 to the Kenai Peninsula Homeless Coalition to support homelessness facilities from the Healthy and Equitable Communities Program award from the State of Alaska;**

- Add a new Section 4, as follows:

**SECTION 4. That any use of the remaining \$100,000.00, which is the balance of the award from the State of Alaska under this program after \$53,940.61 is distributed to the Kenai Peninsula Homeless Coalition, shall be subject to assembly approval.**

- Renumber the remaining sections.

Your consideration of these amendments is appreciated.

## Broyles, Randi

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**From:** Blankenship, Johni  
**Sent:** Tuesday, January 4, 2022 11:57 AM  
**To:** Broyles, Randi  
**Subject:** FW: KPHC Home Test Kit Update  
**Attachments:** At home test.pdf

Please include with Ordinance 2021-19-32

**From:** Cox, Tyson  
**Sent:** Monday, January 3, 2022 10:53 PM  
**To:** Blankenship, Johni <JBlankenship@kpb.us>  
**Subject:** KPHC Home Test Kit Update

Johni - Please forward to all Assembly Members. Thx

Tyson,

Kenai Public Health Center is still distributing test kits to those who walk in. Last week, Kenai Health Center distributed 381 kits to the walk-in public. Since mid-November, Central Kenai Peninsula total distribution is over 3000 from the health center, other facilities such as EMS and municipalities are now ordering their own. An additional 500 were distributed in Seward with other facilities now ordering for themselves in the Seward area. Homer distributes to underserved populations and to South Peninsula Hospital for distribution to the general public.

Currently CDC and State recommend utilization of at home test kits as another tool to combat COVID-19. We've been informed the Binax NOW and the QuickVUE, which are the 2 we currently distribute, do pick up Omicron. Preliminary research indicates they detect omicron, but may have reduced sensitivity. The agency noted it's still studying how the tests perform with the variant, which was first detected in late November. If you follow the directions on the test, the tests are more accurate as it may take 24 to 36 hours to get a large enough viral load for the test to measure the virus. Please take both tests as guided. Each person needs their own test kit to be effective. That is why availability of a lot of kits would be a great thing!

Omicron spreads more rapidly so the at home tests are good because people, businesses, schools can test frequently. That is how you catch infection early. Importantly, you get the results right away, helpful if you are deciding to travel, already in travel status, returning to work, school, etc. AND you can let your contacts know soon. Additionally, people feel more comfortable about gathering with family and friends. A rapid test five days after being exposed to a person who tested positive can give a good indication of whether you caught the virus.

Although Omicron is dominant in the U.S., there are other variants out there and will be more in the future so these tests are useful, convenient, and affordable if we can continue distributing them for free.

As far as hospitalizations, below are what some other states are experiencing. In RED are the cases, in ORANGE are hospitalizations. Both increasing, hospitalizations not as fast. Younger age groups and children are being hospitalized.

Here is a good visual of what is happening nation wide:

<https://www.nytimes.com/interactive/2021/us/covid-cases.html>

Additionally, I have attached a flyer explaining at home test kits.

Please let us know if you have further questions.

Thanks so much,

Leslie

**From:** Felts, Leslie A (HSS)

**Sent:** Thursday, December 16, 2021 3:27 PM

**To:** Cox, Tyson <[tysoncox@kpb.us](mailto:tysoncox@kpb.us)>; Marsters, Tami J (HSS) <[tami.marsters@alaska.gov](mailto:tami.marsters@alaska.gov)>

**Cc:** Leslie Felts <[leslie.felts@alaska.gov](mailto:leslie.felts@alaska.gov)>

**Subject:** RE: Home Covid test kits

Tyson,

As of today, Kenai Peninsula Public Health Nurses have received about 5000 kits, most of which have been distributed or will be soon.

We still target Seward, Moose Pass, Hope, Cooper Landing, Sterling, Nikiski, Soldotna, Kenai, K-Beach, Anchor Point, and Homer, Seldovia and across Kachemak Bay.

Additionally, we've distributed to EMS, Senior Centers, shelters and food banks, libraries, Frontier Community services, Love Inc, law enforcement, cities, villages, and the Soldotna walk in vaccination clinic.

Thanks for your support,

Leslie

**From:** Felts, Leslie A (HSS)

**Sent:** Monday, December 6, 2021 3:51 PM

**To:** Cox, Tyson <[tysoncox@kpb.us](mailto:tysoncox@kpb.us)>; Marsters, Tami J (HSS) <[tami.marsters@alaska.gov](mailto:tami.marsters@alaska.gov)>

**Subject:** RE: Home Covid test kits

Tyson,

Both Kenai Public Health Center and Homer Public Health Centers are distributing kits. Combined, we estimate we have received around 3000 free kits and have distributed approximately 2200 of those. We continue to order and distribute.

Popular in Kenai are people who drop into the Kenai Public Health Center to get free kits.

Additionally, we've distributed to EMS, Senior Centers, shelters and food banks, libraries, Frontier Community services, Love Inc, law enforcement, cities, villages, and the Soldotna walk in vaccination clinic.

We have distributed to the listed sites in Seward, Moose Pass, Hope, Cooper Landing, Sterling, Nikiski, Soldotna, Kenai, K-Beach, Anchor Point, and Homer.

Thank you for your interest!

Leslie

**From:** Tyson Cox <[tysoncox907@gmail.com](mailto:tysoncox907@gmail.com)>  
**Sent:** Saturday, December 4, 2021 9:15 AM  
**To:** Marsters, Tami J (HSS) <[tami.marsters@alaska.gov](mailto:tami.marsters@alaska.gov)>  
**Cc:** Felts, Leslie A (HSS) <[leslie.felts@alaska.gov](mailto:leslie.felts@alaska.gov)>  
**Subject:** Re: Home Covid test kits

Thank you so much for keeping me in the loop. I am following up to our conversation a week or so ago to ask if it would be possible to get an update on how many tests have been received by the KPHC, where they are being distributed, and how many have been given out thus far? Do we have plans for more? I would love to share this information with the rest of the Assembly and KPB public. Thanks for all you do :)

Tyson Cox  
Assembly Member,  
District 4 - Soldotna

[\(907\)252-4814](tel:(907)252-4814)  
[tysoncox@kpb.us](mailto:tysoncox@kpb.us)

On Nov 16, 2021, at 9:39 AM, Marsters, Tami J (HSS) <[tami.marsters@alaska.gov](mailto:tami.marsters@alaska.gov)> wrote:

MR Cox,

Kenai Public Health Center has received Covid home test kits from the State.  
The kits are free to the public and available for pick up at the health center M-F, 8am-5pm.  
The public health nurses will distribute the kits to Businesses/nonprofits etc. in the community.  
Please let me know if you are aware of specific business's etc. that would like to have the covid tests for employees or distribution to the community.  
The school RN's have been notified about the home test kit availability.  
Please call me if I can answer any questions. [907-335-3424](tel:907-335-3424)

Take care,  
Tami

**From:** Marsters, Tami J (HSS)  
**Sent:** Thursday, October 21, 2021 3:40 PM  
**To:** Tyson Cox <[tysoncox907@gmail.com](mailto:tysoncox907@gmail.com)>  
**Cc:** Leslie Felts <[leslie.felts@alaska.gov](mailto:leslie.felts@alaska.gov)>  
**Subject:** Home Covid test kits

**Mr. Cox**

**I did some checking into covid home test kits offered by the State. At this time the State is providing the kits to schools/students.**

**Maybe standing up a testing site with some of the funds would make better use of the money?**

**Karie Hawk, Program Coordinator, in the Section of Rural and Community Health Systems sent me the following information:**

"At this time, the state is only providing the at home Binax test kits to schools/students through a federal education grant. (sorry they are not available for purchase, everything the state has available is free to communities with the understanding it will be used for the appropriate population for which it is requested)"



"We are working on getting more that could be used for people other than schools, please keep checking back to see if that has gotten approved.

As a side note: if the assembly there is adamant about purchasing for Kenai and wishes to direct order from Abbott, my state pharmacy POC said it is possible for you to purchase minimum order of 50,000 Binax at home test kits for about \$400,000."

Karie Hawk  
Program Coordinator I  
Department of Health and Social Services  
Division of Public Health  
Section of Rural and Community Health Systems  
Health Emergency Response Operations

**More information about COVID testing kits provided by the State for the schools, from Elizabeth Manning , Communications Manager:**

DHSS testing

guidance: <https://dhss.alaska.gov/dph/Epi/id/siteassets/pages/humanCOV/AKCOVIDAtHomeTestingGuidance.pdf>

Alaska DHSS At-Home COVID-19 Testing Information (updated 10/11/21): <https://dhss.alaska.gov/dph/Epi/id/siteassets/pages/HumanCoV/AKCOVIDTestingGuidance.pdf>

Place to go for at-home testing kits for schools: <https://dhss.alaska.gov/dph/epi/id/pages/covid-19/schoolyear.aspx>

## COVID-19 Testing Information

All school districts have been allocated funds to cover the expenses associated with COVID-19 testing. These funds can be used to cover the costs if school staff performs testing and analysis, or to contract those activities with local health partners or labs. For more information, contact [schoolhealthandsafety@alaska.gov](mailto:schoolhealthandsafety@alaska.gov).

- [School testing guidance \(PDF\)](#)
- [Reporting template \(Excel\)](#)

Any district, school, community, facility or organization can request at-home test kits via the State of Alaska Emergency Operations Center using an ICS 213 RR-Resource Request Form. Please fill out the "quantity" and the "detailed item/need/capability description" boxes in the "requestor" section of the form and email to [2020\\_COVID-19@ak-prepared.com](mailto:2020_COVID-19@ak-prepared.com). Please include in the email a brief description of how the tests will be used to support schools providing in-person learning. For more information, download the [at-home testing flyer \(PDF\)](#) and [at-home testing guidance \(PDF\)](#).

For information about public testing for all Alaskans, please visit [covid19.alaska.gov](https://covid19.alaska.gov). To find a testing location near you, visit the [State of Alaska testing site locator](#).

**Elizabeth Manning** | *Communications Manager*

Alaska Department of Health and Social Services

3601 C St., Suite 902, Anchorage, AK 99503

907.269.4541 | cell 907.744.4512 | [elizabeth.manning@alaska.gov](mailto:elizabeth.manning@alaska.gov)

[DHSS COVID-19 website](#) | [Sign-up for DHSS Alerts](#)

I will let you know if the State approves providing at home COVID tests for community members other than the schools.

Thank you for your willingness to approach this sensitive subject.  
Take care,  
Tami

Tami Marsters BS,RN  
Public Health Nurse  
Kenai Public Health Center  
630 Barnacle Way Suite A  
Kenai, AK 99611  
907-335-3424

Tyson Cox  
Kenai Peninsula Borough  
Assembly Member, District 4  
(907)252-4814



## At-home COVID-19 tests

An over-the-counter test is a **convenient** option for anyone who needs to get tested for COVID-19. These tests can be **self-administered** at home or anywhere and are designed to be **easy to use**. Sold through stores and pharmacies, these tests can be a useful tool to protect your health and help stop the spread of COVID-19.

### When to use an over-the-counter test

- If you are experiencing any symptoms of COVID-19, regardless of your vaccination status, you can use an over-the-counter test to get fast and accurate results.
- If you are a close contact to someone with COVID-19 and you are not experiencing any symptoms, testing recommendations will vary depending on vaccination status and history of prior COVID-19 diagnosis. Visit this [DHSS webpage](#) for more information.
- When using an over-the-counter test, precisely follow the instructions provided in the test kit box.

### What to do after you receive your results

- Many over-the-counter tests include two tests. If your first test is negative, retest according to the test kit instructions (usually within 1-3 days).
- Symptomatic individuals who receive two negative test results should consider getting a more sensitive test, such as a PCR test. False negatives are not common but do occur.
- If you test positive, isolate immediately and inform any close contacts.
- Share positive test results with your health care provider to learn about possible treatment options or any other appropriate medical follow-up you might need.
- If the test kits were provided to you or self-testing was requested by a school, workplace, event, or other group or organization, they might ask you to share your results with them. If so, contact tracing might also be initiated by the requester.
- Please note: The Alaska Division of Public Health (DPH) is not currently performing contact tracing on positive results from over-the-counter tests. Reporting over-the-counter test results to DPH is not currently required. You can still call Public Health Contact Tracing at 907-531-3329 for questions, education, and resources.
- For more information on what to do next, visit the [DHSS website](#) or the CDC's webpage, *If You Are Sick or Caring for Someone*.

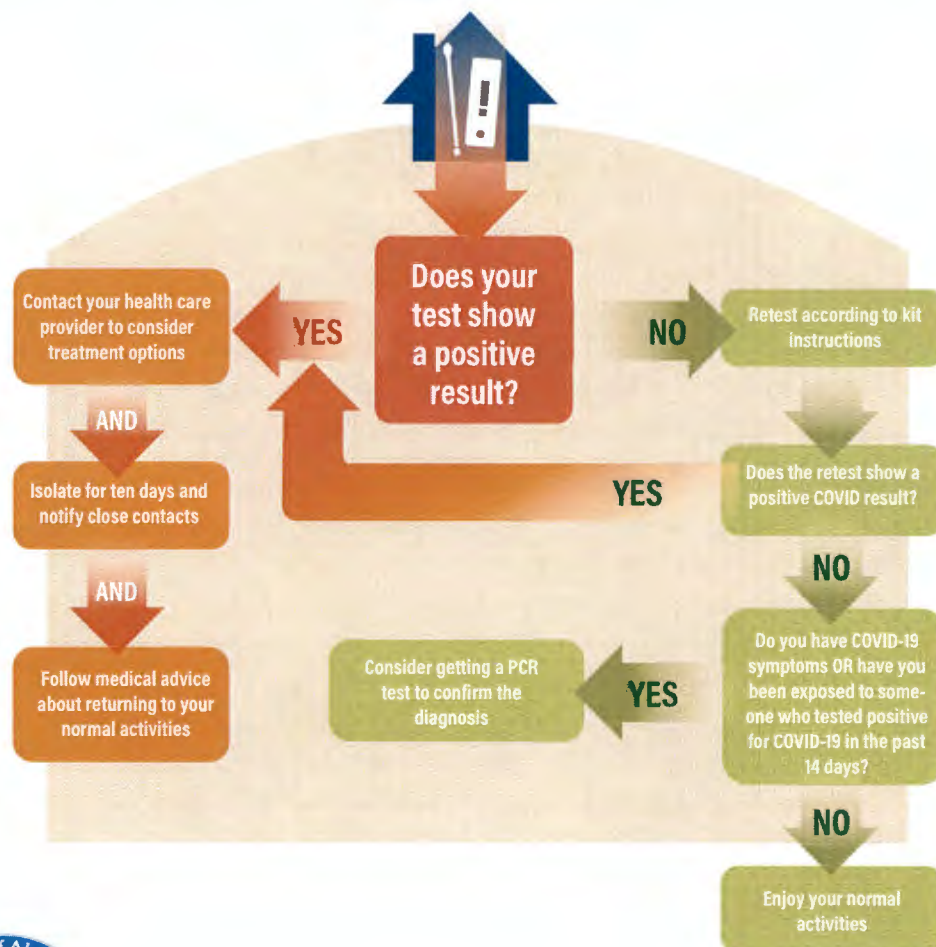


## Where to get over-the-counter tests

- Over-the-counter test kits are available over the counter, without a prescription, in a pharmacy or retail store. Many pharmacies and stores also sell them online. Having a COVID-19 self-test in your medicine cabinet is a simple way to get quick results on your health status.
- Alaska's public health centers and some schools are also providing these tests to those in need. Please check locally with your public health center if you need help acquiring over-the-counter COVID-19 test kits.

## More information

- All the needed materials (including a nasal swab and easy-to-follow instructions) are included in the box.
- Each over-the-counter test kit comes with two cards for two separate tests. If either one of the two test results are positive, people should consider themselves positive. A subsequent negative card does not overrule a positive.
- When travelling, carefully review the testing requirements for each destination. Some places may consider over-the-counter test results insufficient for entry.
- More information about over-the-counter tests is available on the [CDC self-testing webpage](#).



Visit the [CDC self-testing webpage](#) for more information about these tests.  
Call 1-907-531-3329 for more information about isolation and notifying close contacts

November 2021

## Broyles, Randi

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**From:** Blankenship, Johni  
**Sent:** Tuesday, January 4, 2022 11:58 AM  
**To:** Broyles, Randi  
**Subject:** FW: Alaska DHSS Info

**From:** Cox, Tyson  
**Sent:** Monday, January 3, 2022 10:50 PM  
**To:** Blankenship, Johni <JBlankenship@kpb.us>  
**Subject:** Alaska DHSS Info

Johni - Please forward to all Assembly Members. Thx

Tyson,

I will send you the email you requested with specific information regarding at home test kits.

In the meantime, here is a weekly report we receive. Perhaps it can give you some background information.

Thank you,

Leslie

**From:** Alaska Department of Health and Social Services <[AlaskaDHSS@public.govdelivery.com](mailto:AlaskaDHSS@public.govdelivery.com)>  
**Sent:** Thursday, December 30, 2021 2:53 PM  
**To:** Felts, Leslie A (HSS) <[leslie.felts@alaska.gov](mailto:leslie.felts@alaska.gov)>  
**Subject:** COVID-19 Alaska Weekly Case Update: December 19 — December 25, 2021



### Alaska Department of Health & Social Services Weekly Case Update December 19 — December 25, 2021

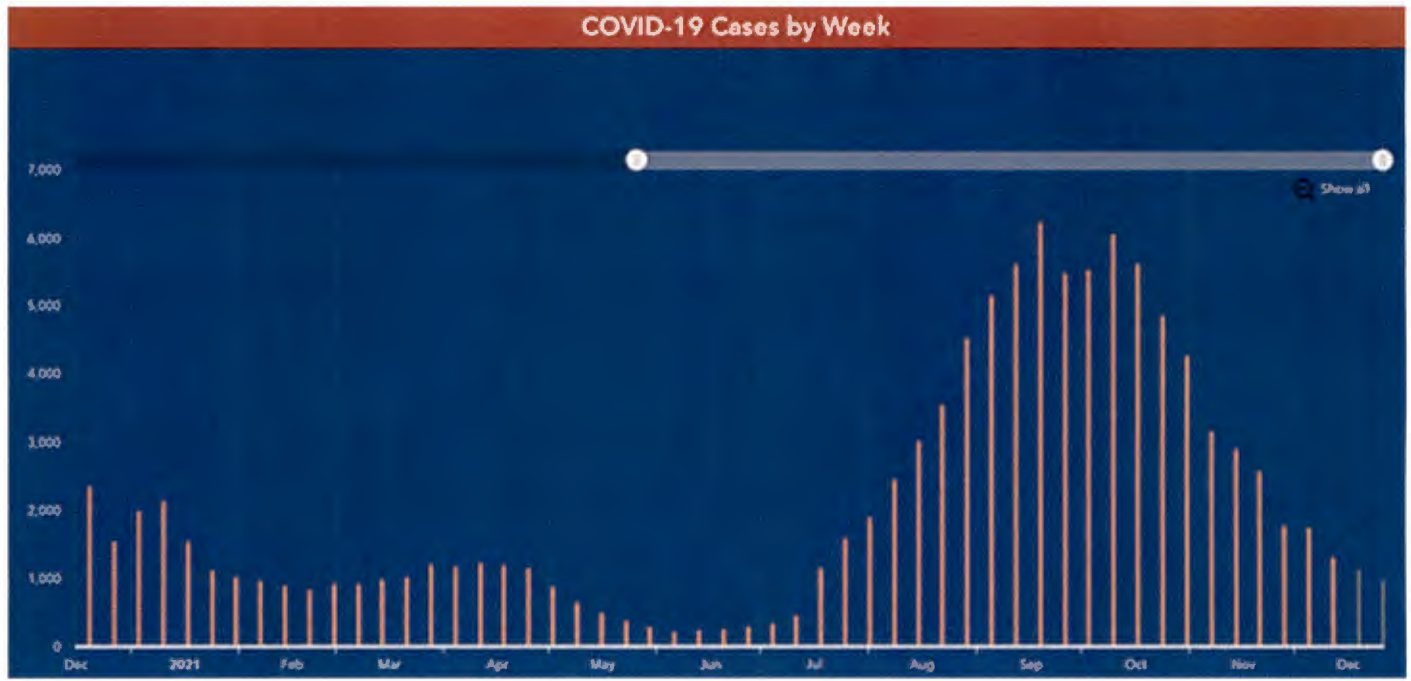


Statewide transmission R <sub>t</sub> 0.87	Statewide alert status 139.9			
Red- Rt >1.2 Orange- Rt 1-1.2 Yellow- Rt <1	7-day case rate per 100,000 population.  Red- ≥100 Orange- 50-99.99 Yellow- 10-49.99 Blue- 0-9.99	Multiple facilities continue to have a high number of inpatients, which results in delays in admitting patients from emergency departments as well as other operational challenges.	Red->5% Orange- 2-5% Yellow- <2%	This includes people with at least one dose. Estimated AK population 5 and older of 680,580 from the AK Department of Labor & Workforce Development.

## Case Trends

- Alaska currently has the forty-fifth highest number of cases in the last seven days per 100,000 population among the 50 states.
- Hospital capacity has been strained during the Delta variant wave of COVID-19 such that in some hospitals, it may become difficult to care for everyone who needs care, even for non-COVID health concerns. Some care may need to be delayed, there may be long wait times, and hospital beds may not be available.
  - Hospitalizations are continuing to occur in younger Alaskans, with the median age of persons hospitalized due to COVID-19 in 2021 being about 5 years younger than in 2020.
  - Among those hospitalized due to COVID-19 and with specimen collection dates from January 16, 2021 through December 25, 2021, unvaccinated and partially vaccinated patients had a median age 14 years younger than fully vaccinated patients.





- Wearing a mask when in indoor public spaces regardless of vaccination status is an important step to take to slow the spread of COVID-19. Most Alaskans live in an area with substantial or high community transmission where this action is needed to protect your health and the health of others.
- Continue to avoid crowds and practice social distancing – particularly when indoors.
- Seek testing if you have any symptoms or have been exposed to an infected person. If you do test positive, isolate right away, and notify your contacts. Ask them to get tested and to quarantine. The [CDC recommends](#) people should quarantine if they are unvaccinated, more than six months out from their second mRNA dose (and not yet boosted), or more than 2 months out from their Janssen vaccine (and not yet boosted).
- If you test positive and you're at increased risk for severe COVID, consider obtaining monoclonal antibody treatment or oral antivirals. These have been shown to be effective treatments for reducing the risk of hospitalization. These treatments work best when given early.
- Persons at high risk include but are not limited to persons who are elderly, immunocompromised, obese, pregnant, or have certain chronic underlying medical conditions.

### Borough/Census Area Alert Level Trends

- Alert levels are based on the case counts over the past 7 days as well as the daily number of reported cases over the past 7 days per 100,000 population.
- Alert levels have been changed to more closely mirror CDC's community transmission indicator and are calculated by borough and census area, rather than by region.

Borough/Census Area	Alert Level December 6		Alert Level December 13		Alert Level December 20		Alert Level December 27	
	Count	Rate	Count	Rate	Count	Rate	Count	Rate
Anchorage Municipality	570	200.4	488	161.3	425	150.5	393	130.0
Fairbanks North Star Borough	144	148.2	91	93.7	123	126.6	125	128.7
Juneau City and Borough	59	165.7	83	195.3	55	173.1	73	229.8
Kenai Peninsula Borough	117	198.5	74	125.8	72	122.2	78	132.4
Matanuska-Susitna Region	286	200.5	217	202.3	181	168.7	107	99.7
Nome Census Area	65	605.4	58	503.7	45	400.5	19	194.5*
North Slope Borough	12	122.0*	8	81.9*	4	**	6	61.4*
Northwest Arctic Borough	74	975.9	35	461.0	17	224.2*	15	197.8*
Chugach Census Area	4	**	1	**	10	148.1*	2	**
Copper River Census Area	17	629.9*	7	250.4*	3	—	0	222.3*
Denali Borough	3	—	0	**	0	**	1	**



Southeast Fairbanks Census Area	4	**	8	115.3*	2	**	7	100.9*
Yukon-Koyukuk Census Area	1	**	3	**	17	337.0*	1	**
Haines Borough	3	**	0	**	4	**	0	**
Petersburg Borough	13	407.7*	3	**	6	188.1*	6	188.1*
Sitka City and Borough	10	117.3*	28	305.1	23	269.9	29	340.3
Skagway Municipality	2	**	1	**	1	**	1	**
Wrangell City and Borough	4	**	1	**	0	**	1	**
Yakutat plus Hoonah-Angoon	1	**	1	**	3	**	9	330.9*
Ketchikan Gateway Borough	104	760.4	67	489.9	52	380.2	52	380.2
Prince of Wales-Hyder Census Area	29	377.7	13	213.5*	7	114.9*	7	114.9*
Bethel Census Area	79	442.1	40	223.9	31	173.5	18	160.7*
Kusilvak Census Area	64	791.3	55	680.0	52	642.9	35	432.7
Aleutians East Borough	0	**	1	**	0	**	1	**
Aleutians West Census Area	1	**	2	**	0	**	4	**
Dillingham Census Area	23	481.0	13	272.4*	5	**	7	146.7*
Kodiak Island Borough	13	103.1*	19	150.7*	8	63.4*	13	103.1*
Bristol Bay plus Lake and Peninsula	10	313.2*	5	**	3	**	3	**
<b>Statewide</b>	<b>1,715</b>	<b>235.3</b>	<b>1,278</b>	<b>175.3</b>	<b>1,160</b>	<b>159.1</b>	<b>1,020</b>	<b>139.9</b>

\*Rates based on <20 observations are statistically unreliable and should be used with caution.

\*\*Rates based on <6 observations are not reported.

## Vaccination Status

- Anyone aged ≥5 years in Alaska is now eligible to receive a COVID-19 vaccine.
- If you have received an initial dose of the Pfizer or Moderna COVID-19 vaccine, be sure to get your second dose too.
- Everyone ≥18 years old who received the primary series of an mRNA (Pfizer or Moderna) COVID-19 vaccine ≥6 months ago should receive a booster dose.
- For people who received the Janssen COVID-19 vaccine, a booster dose (either the Janssen vaccine again or an mRNA vaccine) is recommended for anyone aged ≥18 years who was vaccinated ≥2 months ago.
- Adolescents aged 16 and 17 who received the primary series of the Pfizer vaccine ≥6 months ago may receive a booster dose of the Pfizer vaccine.



- Learn more about who should get a booster dose and to find COVID-19 vaccines near you at [covidvax.alaska.gov](https://covidvax.alaska.gov).
- CDC [recommends](#) that people with moderately to severely compromised immune systems receive an additional dose of mRNA COVID-19 vaccine at least 28 days after a second dose of an mRNA vaccine.
- Vaccinated persons with immunocompromising conditions should discuss with their health care providers the need for additional personal protective measures.
- To schedule your vaccine appointment visit [covidvax.alaska.gov](https://covidvax.alaska.gov) or call [907-646-3322](tel:907-646-3322).
- To find clinics in your area you can visit [vaccines.gov](https://vaccines.gov) or text your zip code to GETVAX (438829) in English, or VACUNA (822862) for Spanish.
- The Alaska [vaccine dashboard](#) is available online for the most up-to-date data.

### Borough/Census Area Vaccination Coverage

This is the percent of Alaskans aged ≥5 years who received one or more doses of vaccine.

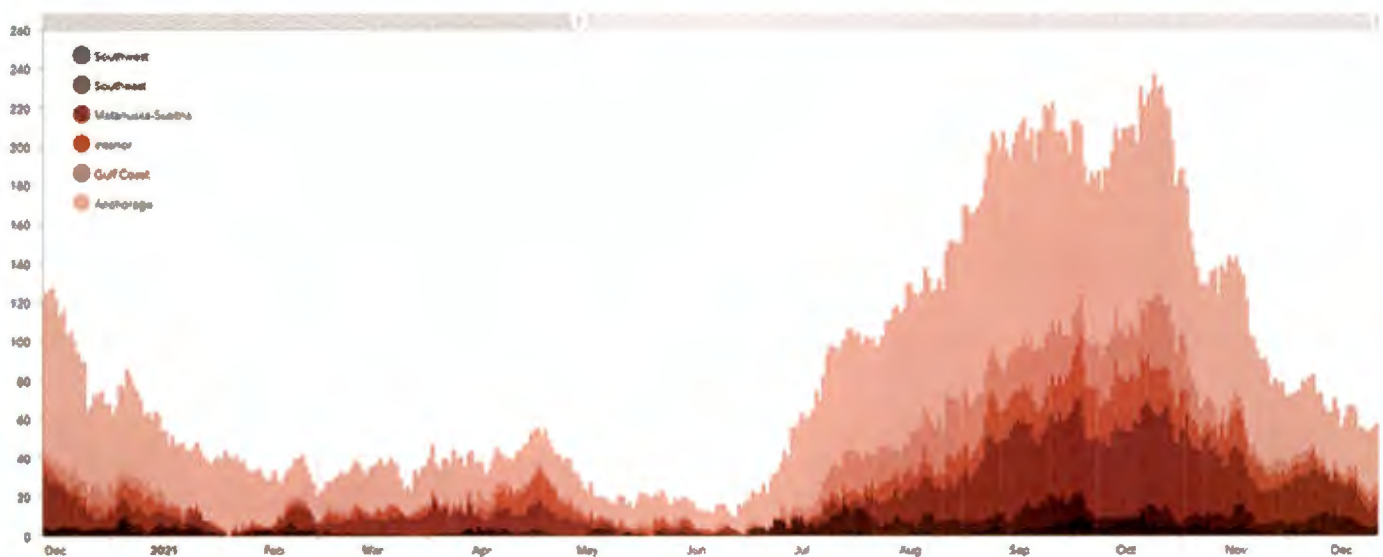
Borough/Census Area	December 27
Aleutians East Borough	95%
Aleutians West Census Area	74%
Anchorage Municipality	75%
Bethel Census Area	80%
Bristol Bay plus Lake and Peninsula	77%
Denali Borough	75%
Dillingham Census Area	65%
Fairbanks North Star Borough	67%
Haines Borough	72%
Juneau City and Borough	84%
Kenai Peninsula Borough	53%
Ketchikan Gateway Borough	71%
Kodiak Island Borough	73%
Kusilvak Census Area	80%
Matanuska-Susitna Borough	45%
Nome Census Area	82%
North Slope Borough	42%
Northwest Arctic Borough	67%
Petersburg Borough	68%
Prince of Wales-Hyder Census Area	69%
Sitka City and Borough	82%
Skagway Municipality	82%
Southeast Fairbanks Census Area	39%
Valdez-Cordova Census Area	65%

Wrangell City and Borough	65%
Yakutat plus Hoonah-Angoon	80%
Yukon-Koyukuk Census Area	83%
<b>Statewide</b>	<b>67.5%</b>

## New Hospitalizations and Deaths

- Cumulative hospitalizations increased by 44 to 3,248. Hospitalization reports often lag when a case was initially reported.
- 6.7% of hospitalized patients in Alaska had COVID-19 as of December 27, 2021.
- On December 25th there were 55 persons with COVID-19 in AK hospitals, which is a 15.4% decrease relative to the week before when there were 65 persons hospitalized.
- The cumulative number of COVID-19 deaths among Alaska residents increased by 30 to 945. It is common to take some time for a death to be reported and verified, and deaths that occurred during December 19–December 25 may be reported in the future after death certificates are reviewed.

## Total Confirmed COVID Beds Occupied



## Variant Tracking

The most recent Genomic Surveillance data can be found on the [“COVID-19 Variants”](#) tab of the Cases Dashboard.

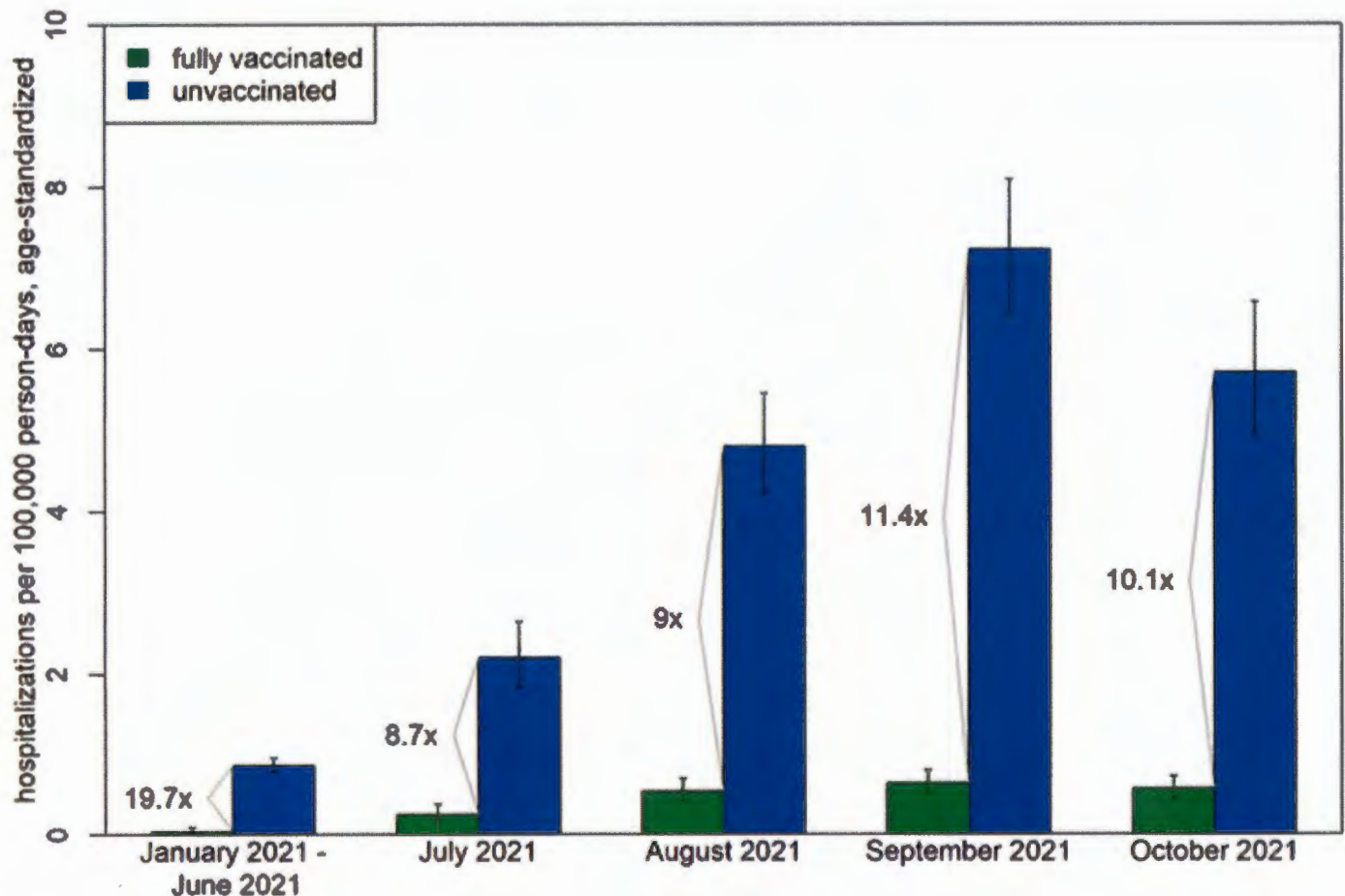
Variant of Concern	Cases Identified	Change from Previous Report	First Identified in Alaska
Delta (B.1.617.2-like)	6,239	+42	30 May 2021
Omicron (B.1.1.529-like)	6	+5	29 November 2021
Variant Being Monitored	Cases Identified	Change from Previous Report	First Identified in Alaska



Alpha (B.1.1.7)	466	0	20 December 2020
Beta (B.1.351)	7	0	20 March 2021
Epsilon (B.1.427/429)	144	0	24 December 2020
Eta (B.1.525)	1	0	16 March 2021
Gamma (P.1/P.1.1/P.1.2)	77	0	8 February 2021
Iota (B.1.526)	24	0	4 February 2021
Mu (B.1.621)	161	0	6 May 2021
Zeta (P.2)	4	0	27 January 2021

## Vaccine Breakthrough Cases

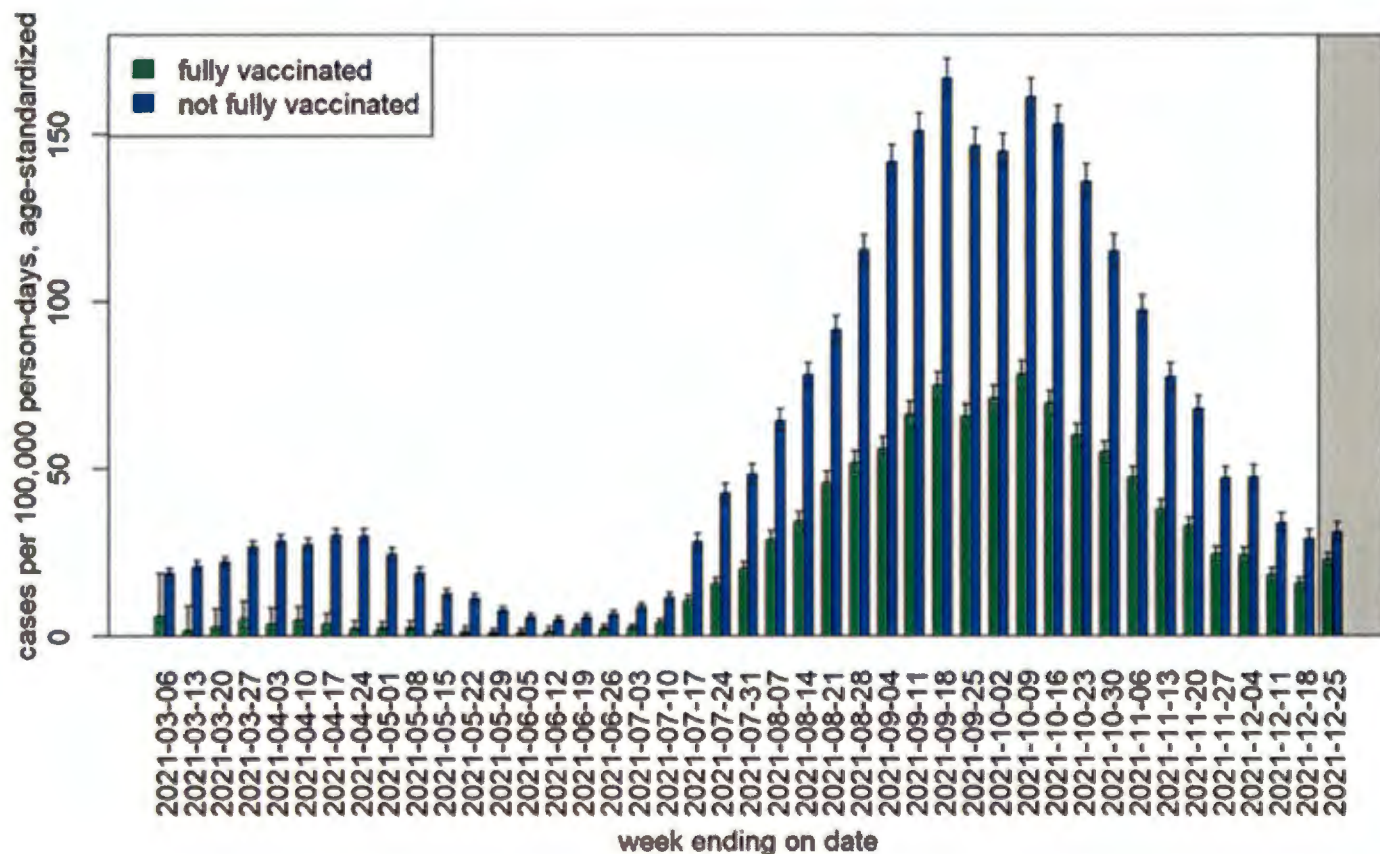
- Vaccine breakthrough (VB) infections of COVID-19 are those detected in a person who is at least 2 weeks beyond their second dose of a 2-dose series or the only dose of a 1-dose series.
- Alaska residents who are fully vaccinated are much less likely to be hospitalized due to COVID-19 than those who are not fully vaccinated. (Age-standardized per capita rates of COVID-19 hospitalizations by vaccination status are updated monthly.)



- The following updated VB data are among Alaska residents aged  $\geq 5$  years with a specimen collection date from January 16–December 25, 2021.
  - From January 16–December 25, 2021, 112 deaths, 344 hospitalizations, and 25,954 cases with a VB infection were reported among Alaska residents aged  $\geq 5$  years. These counts are provisional

and subject to change as data are compiled and reviewed. In that same time frame, a total of 94,696 cases, 2,037 hospitalizations, and 634 deaths were reported.

- 73% of all cases, 83% of all hospitalizations, and 82% of deaths among Alaska residents aged ≥5 years from January 16–December 25, 2021 were in people who were not fully vaccinated.
- More detailed information about hospitalizations, deaths, repeat and vaccine breakthrough infections among Alaska residents can also be found in the [monthly report](#), which includes data through October.
- Age-standardized per capita rates of COVID-19 cases by vaccination status are updated weekly. Some COVID-19 cases with specimen collection in the immediate past week (indicated by the grey box) may have not yet been reported or counted.



- The following table shows by region the number of vaccine breakthrough cases and the number of cases among persons who are not fully vaccinated.

Region	Dates (December 19–December 25)	
	Vaccine breakthrough (All ages)	Not fully vaccinated (All ages)
Anchorage Municipality	256	279
Fairbanks North Star Borough	84	82
Juneau City and Borough	36	44
Kenai Peninsula Borough	27	53
Matanuska-Susitna Borough	51	101
Northwest Region	23	14
Other Interior Region	10	5



Other Southeast Region - Northern	16	28
Other Southeast Region - Southern	26	28
Southwest Region	17	9
Y-K Delta Region	31	16

\*\*To protect privacy, data are excluded from rows in which any value is <5.

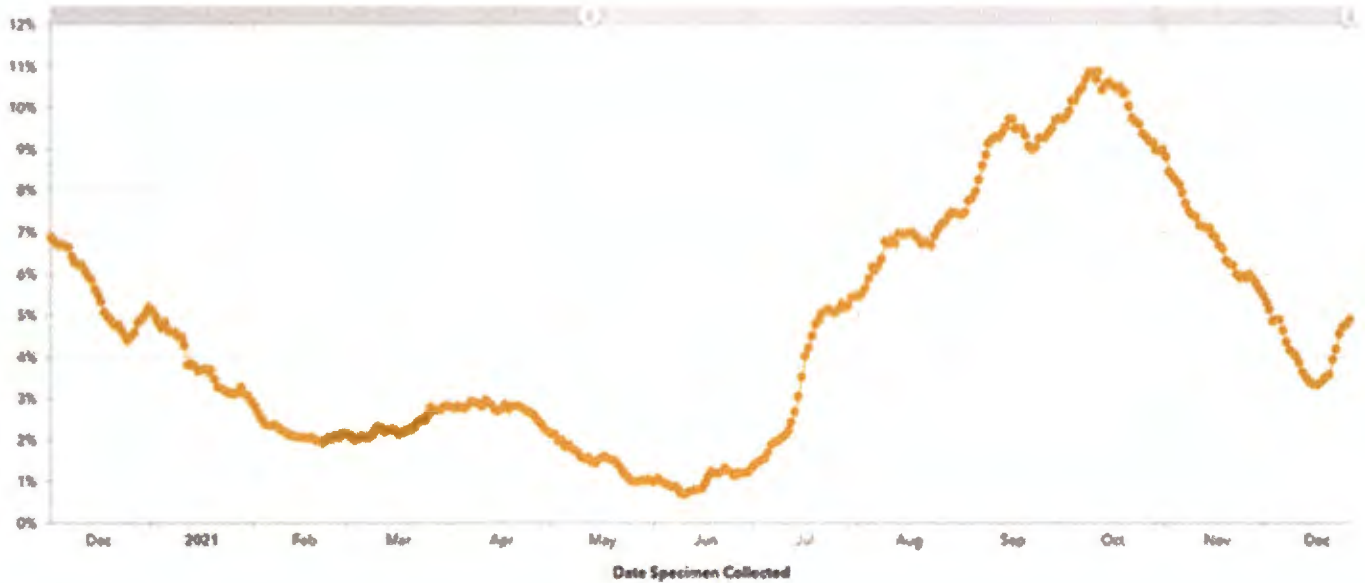
A variety of factors may affect the proportion of vaccine breakthrough cases by region. In communities with higher vaccination coverage, a larger proportion of cases is expected to occur among fully vaccinated persons. Other potential factors include the extent of prior infection in a region and differences in testing practices between regions.

## COVID-19 Communication Resources

- DHSS Insights Blog: [Celebrate the Holidays Safely](#)
- Revised webpages:
  - [COVID-19 Vaccine Information for all Alaskans](#)
  - [COVID-19 treatments for hospitalized patient](#)
  - [COVID-19 Outpatient Treatment](#)
  - [Guidance for COVID-19 Testing in Alaska](#)
- New video PSAs to share:
  - [16+ Booster Dose](#)
  - [Bring Back the Light](#)
  - [Pediatric Vaccine](#)
  - [Holiday Vaccine](#)
  - [Home Test](#)
  - [Home Test Social Media](#)
  - [Pediatric Vaccine: Dr. Adam Grove](#)
  - [Boosters for anyone 18+](#)
  - [COVID-19 Vaccines for Ages 5+](#)
  - [Holiday Flu](#)
  - [Why Not Get Vaccinated?](#)
  - [Layer up, Alaska!](#)
- Pediatric COVID-19 Vaccine Flyer: [5 Reasons to Vaccinate for Ages 5+](#)
- Over-the-Counter Testing Flyer: [At-home COVID-19 tests](#)
- Request support from DHSS
  - DHSS offers free presentations upon request to groups about COVID-19, the vaccines, COVID-19 prevention, or other health topics upon request. Learn more or request a presentation on our [Speaker's Bureau web page](#).
  - DHSS offers support for one-time or reoccurring COVID-19 vaccination events. Submit your request for support and provide information about the event by [filling out this form](#).

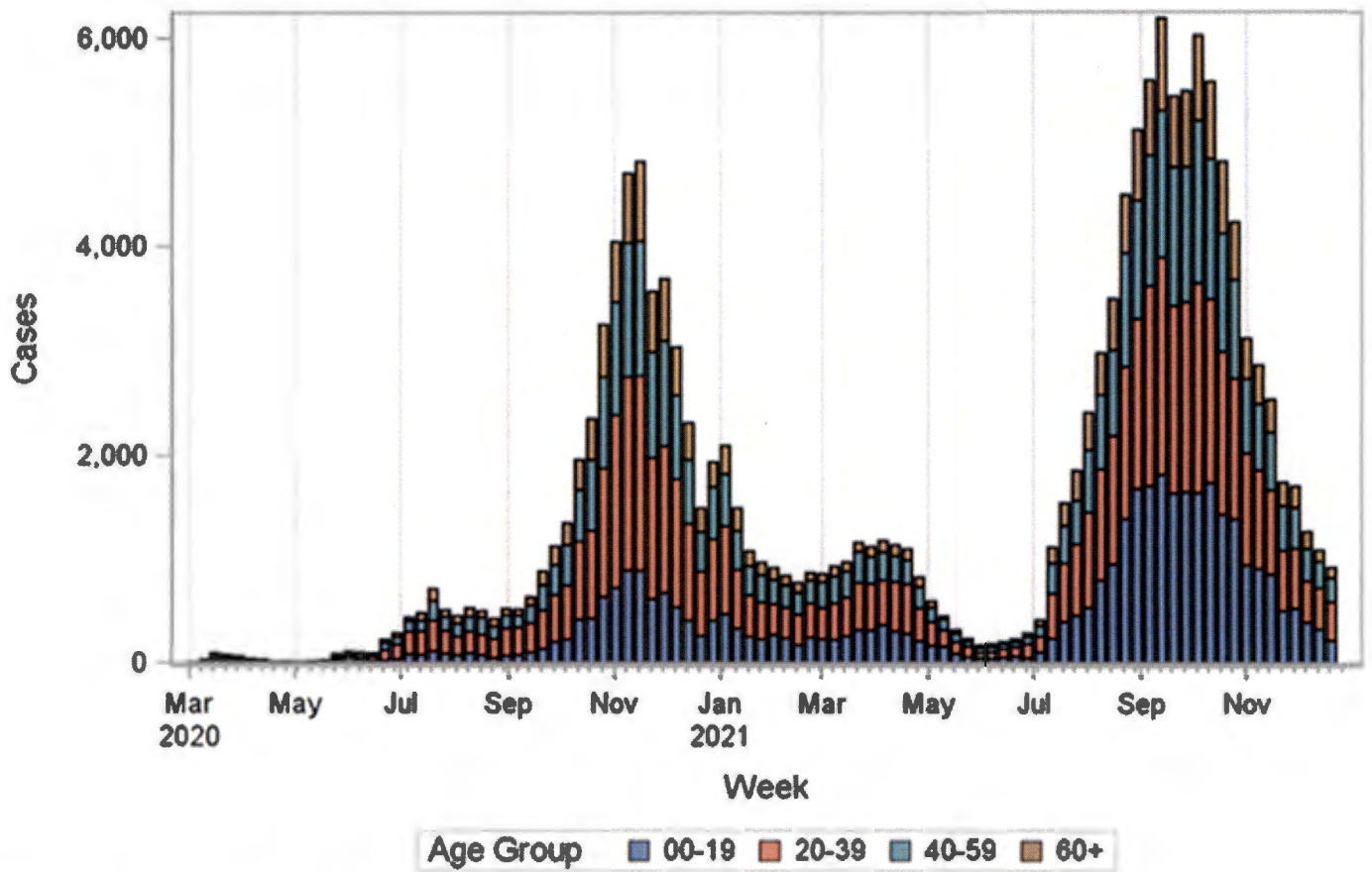
- Can't tune into a live ECHO videoconference but don't want to miss out on the latest updates? The full schedule of ECHO sessions and access to COVID-19 ECHO videos and slideshows are available for download anytime on the [DHSS ECHO web page](#).

## Statewide Percentage of Daily Tests with Positive Results (Seven day rolling average)



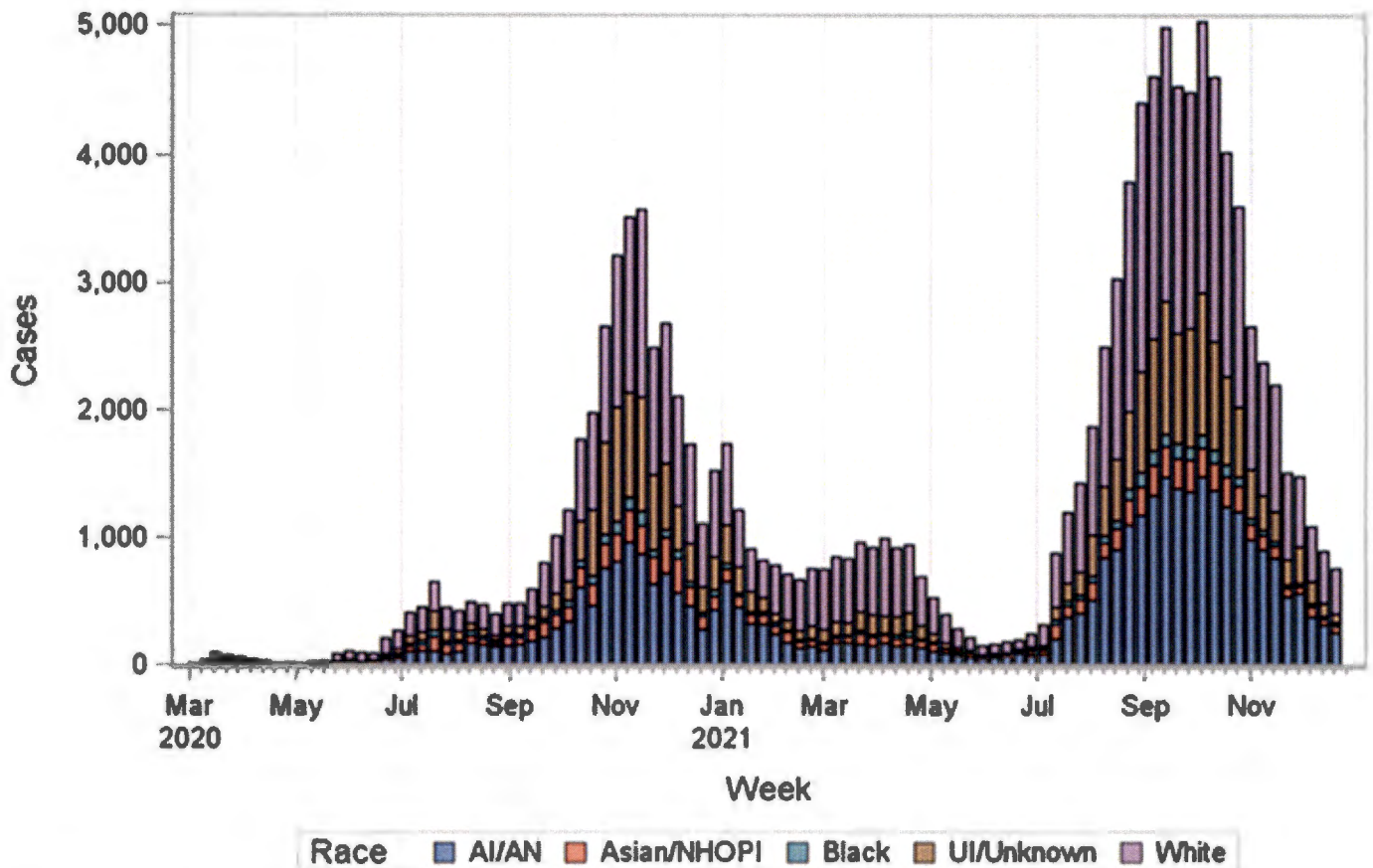
## Cases by Week of Onset and Age





*Note: Quality assurance efforts are ongoing to attribute cases to the correct date on the onset date epi curve. Some recent cases will be reattributed to different weeks.*

## Cases by Week of Onset and Race



*Note: Quality assurance efforts are ongoing to attribute cases to the correct date on the onset date epi curve. Some recent cases will be reattributed to different weeks. Race abbreviations include AI/AN (American Indian or Alaska Native), Asian/NHOPI (Asian, Native Hawaiian or Other Pacific Islander), and UI/Unknown (Under investigation or unknown).*

### Additional informational resources:

- The State of Alaska [COVID-19 vaccine status update page](#)
- The State of Alaska [COVID-19 information page](#) provides more information about the virus and how individuals and businesses can protect themselves and others from transmission.
- For the most up-to-date case information, see the Alaska Coronavirus Response Hub dashboard: [data.coronavirus.alaska.gov](https://data.coronavirus.alaska.gov). All dashboard data are updated Mondays, Wednesdays, and Fridays (except [holidays](#)).
- For DHSS media inquiries, please contact [clinton.bennett@alaska.gov](mailto:clinton.bennett@alaska.gov)

### Additional ECHO session details:

**Updated December 30, 2021**





UAA Center for  
Human Development  
UNIVERSITY of ALASKA ANCHORAGE



**These ECHO sessions are produced and facilitated by  
UAA's Center for Human Development Alaska ECHO project  
in partnership with the State of Alaska, Department of Health & Social Services**

**Important Note:** Most Division of Public Health ECHO series will be taking a break from December 20-December 31 for the winter holidays. Please check [individual ECHO registration pages](#) for additional information on holiday scheduling.

[Session information and recordings of previous ECHO sessions](#)  
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Tyson Cox  
Kenai Peninsula Borough  
Assembly Member, District 4  
(907)252-4814

## Kenai Peninsula Borough Community & Fiscal Projects

### MEMORANDUM

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

**THRU:** Charlie Pierce, Mayor *CP*  
Brandi Harbaugh, Finance Director *BH*

**FROM:** Brenda Ahlberg, Community & Fiscal Projects Manager *Ba*

**DATE:** November 23, 2021

**RE:** Ordinance 2021-19-32, Accepting and Appropriating Funding from the State of Alaska in the Amount of \$153,940.61 for the Healthy and Equitable Communities Program, a Federal Pass-Thru Award under the Centers for Disease Control and Prevention (Mayor)

The State of Alaska Department of Health and Social Services (DHSS), Division of Public Health is providing funding to municipalities to help improve efforts and increase access to COVID-19 testing; to build capacity to increase access to vaccinations; and, to address recovery activities. The original calculation for the borough was \$237,043.12, which allowed a portion to be directly designated to the cities of Kenai and Soldotna by way of Ordinance 2021-19-29 (withdrawn prior to introduction at the assembly's November 9, 2021 meeting).

Since the postponement of O2021-19-29, DHSS has agreed to create three direct awards from the borough's original calculation of the \$237,043.12 as follows:

- City of Kenai \$43,298.45
- City of Soldotna \$25,847.27
- City of Homer \$67,897.40 (to be used collaboratively with South Peninsula Hospital)

Therefore, this ordinance requests approval and appropriation for \$153,940.61, of which, \$100,000 may be used for testing and treatments, through contracts or subawards, and \$53,940.61 shall be subawarded to the Kenai Peninsula Homeless Coalition to supplement their facility operations. The award amount has changed from the original \$237,043.12 to \$153,940.61 as a result of an increase of \$53,940.61 to be paid to the Kenai Peninsula Homeless Coalition and direct allocation to the cities of \$137,043.12.

The Community & Fiscal Projects Manager will provide grant oversight. Your consideration of this ordinance is appreciated.

Attachment: DHSS notification

**FINANCE DEPARTMENT  
FUNDS/ACCOUNT VERIFIED**

Acct. No. 271.94910.22VAC.49999

Amount: \$153,940.61

Contingent upon approval of ord.

By: *CP* Date: 11/23/2021



**From:** [Caruso, Maria T \(HSS\)](#)  
**To:** [Ahlberg, Brenda](#)  
**Cc:** [Eisenmann, Raquel A \(HSS\)](#)  
**Subject:** <EXTERNAL-SENDER>Healthy & Equitable Communities Funding Allocations Notice  
**Date:** Friday, November 19, 2021 4:40:45 PM

---

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

Dear Ms. Ahlberg,

This email is to officially notify the borough of how the state intends to award funds based on our partnership with Kenai Peninsula Borough and the cities of Soldotna, Kenai and Homer.

In accordance with requests from these communities and the borough, the state will allocate the following amounts from the Healthy & Equitable Communities MOA program:

City of Homer: \$33,639.28 + additional \$67,897.40 from KPB allocation

City of Kenai: \$43,298.45 + additional \$43,298.45 from KPB allocation

City of Soldotna: \$25,847.27 + additional \$25,847.27 from KPB allocation

Kenai Peninsula Borough: \$153,940.61 (\$53,940.61 of this funding will be passed through to the Kenai Peninsula Homelessness Coalition who will be provided with technical assistance from the state Healthy & Equitable Communities Team on how funding is to be utilized, as well as assistance on reporting requirements and metrics).

Thank you so much for your partnership with the state, and please let me know if you have any additional questions or concerns.

Best,

**Maria Caruso**

Program Coordinator II / COVID-19 EOC

DHSS | Division of Public Health

State of Alaska

**Phone:** 907-310-6092

**Email:** [maria.caruso@alaska.gov](mailto:maria.caruso@alaska.gov)



Introduced by:	Mayor
Date:	01/04/22
Action:	Adopted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2022-001**

**A RESOLUTION TO FORM THE SOUTH BEND BLUFF ESTATES ROAD  
IMPROVEMENT ASSESSMENT DISTRICT AND PROCEED WITH THE  
IMPROVEMENT**

- WHEREAS,** KPB Chapter 14.31 authorizes the formation of road improvement districts within the Kenai Peninsula Road Service Area (RSA); and
- WHEREAS,** an application for a petition to form a road improvement assessment district (RIAD) was received from the property owners within the proposed district; and
- WHEREAS,** KPB 14.31.040 requires that applications to form a RIAD and to participate in the RIAD match program shall be received no later than July 1 of each year; and;
- WHEREAS,** the application for South Bend Bluff Estates RIAD formation and to participate in the match program was submitted timely; and
- WHEREAS,** on November 24, 2020, the RSA board reviewed the RIAD application and authorized funding to obtain an engineer's estimate for the South Bend Bluff Estates RIAD for the purpose of an improvement and paving upgrade on that portion of Winridge Avenue (1,030 LF), Winridge Court (550), Wispen Avenue (850), Grant Avenue (1,710) and Southbend Court (665), for approximately 4,805 total lineal feet of roadway; and
- WHEREAS,** pursuant to KPB 14.31.065, on September 14, 2021, the RSA board adopted RSA Resolution 2021-006 approving the circulation of the South Bend Bluff Estates RIAD petition consistent with the recommendations in the staff report of November 24, 2020; and
- WHEREAS,** KPB 14.31.070(D) requires signatures of the owners of record of (a) at least 60 percent of the total number of parcels subject to assessment within the proposed district and (b) at least 60 percent in value of the property to be benefited, in order to be considered by the assembly for formation, and 78.43 percent of recorded owners have signed the petition, and 84.15 percent in value of the property to be benefited; and
- WHEREAS,** the petition and required filing fee were submitted timely by the sponsor, and the borough clerk has certified that the petition contains sufficient signatures to meet the thresholds required by KPB 14.31.070; and



**WHEREAS,** the borough clerk gave notice of the public hearing for this resolution by certified mail, return receipt requested, mailed not less than 35 days before the date of the hearing, to each record owner of a parcel in the proposed district; and

**WHEREAS,** the clerk further gave notice by publication once a week for two consecutive weeks in a newspaper of general circulation in the borough, with the first publication appearing not less than 30 days before the date of the hearing; and

**WHEREAS,** more than 35 days have passed since the mailing of the notice of the public hearing to each record owner of a parcel in the proposed district, and no written objections to the necessity of formation of the district has been filed with the borough clerk; and

**WHEREAS,** KPB 14.31.090 requires the mayor to prepare for assembly consideration a resolution to form the special assessment district and proceed with the improvement, and to submit with the resolution the petition report described in KPB 14.31.060, the RSA resolution to approve the petition report and recommend a borough match, a description of the current condition of the rights-of-way that are to be improved and a statement of the need for the proposed local improvement, and the method of financing the improvement;

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

**SECTION 1.** That the Kenai Peninsula Borough shall form the South Bend Bluff Estates Road Improvement Assessment District (RIAD), and the mayor is authorized to proceed with the construction of the improvement in accordance with the provisions of KPB Chapter 14.31 and RSA Resolution 2021-06, attached as Exhibit 1 to the Mayor's Report.

**SECTION 2.** That pursuant to the requirements of KPB 14.31.090, this resolution is supported by the Mayor's Report, which is attached hereto and incorporated herein by reference.

**SECTION 3.** That the proposed South Bend Bluff Estates RIAD is necessary and should be made and is hereby formed, and the borough shall proceed with the construction of the proposed paved improvement for a district encompassing 51 benefited parcels in the area of Kalifornsky, for approximately 4,805 linear feet of roadways of that portion of Winridge Avenue, Winridge Court, Wispen Avenue, Grant Avenue, and Southbend Court.

**SECTION 4.** That the boundaries of the RIAD for improving the roadway set forth in the district map attached as Exhibit 4, page 11, to the Mayor's Report and the properties legally described in the Estimate Assessment Roll as Mayor's Report Exhibit 4, pages 7-10, are hereby approved as comprising the RIAD.

**SECTION 5.** That the estimated cost of the project of \$770,164.26, which includes direct costs of \$691,450.33, a 10 percent KPB project contingency of \$69,145.03 per KPB 14.31.060(2)(a), and indirect administrative costs of \$9,568.90, is approved.

**SECTION 6.** That the attached Estimate Assessment Roll, Mayor's Report Exhibit 4, pages 7-10, which includes properties within the district to be properly included and subject to an assessment of \$7,550.63 per parcel for the improvement, is incorporated by reference herein and adopted.

**SECTION 7.** That the mayor is authorized to negotiate and execute such documents as are determined to be in the best interests of the borough to proceed with the construction of the improvement and to accomplish all other aspects of this project.

**SECTION 8.** That the borough clerk shall cause a copy of this resolution and estimated assessment roll to be recorded in the District Recorder's Office for the State of Alaska at Kenai.

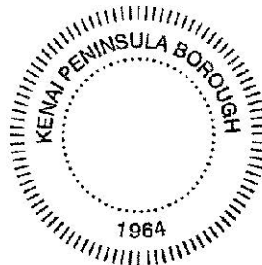
**SECTION 9.** That this resolution is effective immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 4TH DAY OF JANUARY, 2022.**

  
Brent Johnson, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



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

No: None

Absent: None



# Kenai Peninsula Borough

## Assessing Department

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### MEMORANDUM

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

**THRU:** Charlie Pierce, Mayor *CP*  
Adeena Wilcox, Director of Assessing *aw*

**FROM:** Marie Payfer, Special Assessment Coordinator *MP*

**DATE:** December 22, 2021

**RE:** Mayor's Report Resolution 2022-001, To Form the South Bend Bluff Estates Road Improvement Assessment District and Proceed with the Improvement (Mayor)

---

### MAYOR'S REPORT

Property owners in the proposed South Bend Bluff Estates Road Improvement Assessment District ("RIAD") have worked with the borough administration to form the proposed RIAD. Pursuant to the requirements of KPB 14.31.065, on September 14, 2021, the Road Service Area ("RSA") Board adopted RSA Resolution 2021-006, approving the petition report before its circulation among benefited property owners, approving up to \$385,082.13 as the RSA match for this project, and recommending the formation of the district (see Exhibit 1).

This resolution to form the RIAD and proceed with the improvement approves the formation of the RIAD and authorizes the mayor to proceed with the construction of the improvement. This is the first step in a three-step process requiring assembly action for the RIAD: 1) resolution to form the district and proceed with the improvement; 2) ordinance of appropriation of funds; and, 3) ordinance of assessment.

KPB 14.31.070(D) requires the petition to contain the signatures of the owners of record of (a) at least 60 percent of the total number of parcels subject to assessment within the proposed district; and, (b) at least 60 percent in value of the property to be benefited, in order to be considered by the assembly for formation. A completed petition for the formation of the RIAD was received by the assessing department on November 1, 2021. On November 1, 2021, the borough clerk certified the petition with 40 of 51 property owners, 78.43 percent, supporting the proposed district and 84.15 percent of the value of the district (see Exhibit 2, Certification of Petition, and Exhibit 4, Estimate Assessment Roll). Additionally, the borough clerk sent all required notices to the property owners and published the required information concerning the proposed district as required by borough code.

Page -2-

Date: December 22, 2021

RE: R2022-001

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The resolution is supported by the exhibits listed herein which provide the documentation required by code to support forming this RIAD and proceeding with construction.

Pursuant to KPB 14.31.090, the mayor shall prepare for assembly consideration a resolution to form the special assessment district and proceed with the improvement. The mayor shall submit with the resolution the following information, all of which is detailed in the referenced Exhibits to this memo.

- 1) RSA Resolution 2021-006, September 14, 2021, see Exhibit 1.
- 2) Certification of Petition, South Bend Bluff Estates RIAD, dated November 1, 2021, see Exhibit 2.
- 3) RSA Staff Report, dated November 24, 2020, a description of the current condition of the rights-of-way proposed for improvement and a statement of the need for the proposed local improvement, see Exhibit 3.
- 4) The petition report prepared by borough staff under KPB 14.31.060, updated to account for any change in information, see Exhibit 4. The petition report includes the following exhibits:
  - a) The petition information sheet which provided a description of the proposed improvement, and a description of the limitations on withdrawing a petition signature under KPB 14.31.070(E) (see Exhibit 4, pages 3-5).
  - b) The estimate assessment roll spreadsheet which provides the legal description of the benefited parcels, the name of the record owner, the total estimated cost of the project, an estimate of the amount to be assessed to each parcel, the status of tax payments, if there are other special assessment liens against any of the parcels in the proposed district, and a description of any benefited parcels that exceed the assessment-to-value ratio set forth in KPB 14.31.080(A)(1). There are no properties within this proposed district delinquent in payment of real property taxes, and no properties with other borough special assessment liens (see Exhibit 4, pages 7-10).
  - c) A map of the proposed RIAD district and boundaries (see Exhibit 4, page 11).
  - d) A memorandum from the Finance Director stating the method of financing, interest rate to be paid, and setting forth the number and frequency of payments (see Exhibit 4, pages 13 & 14).
  - e) Summary of construction cost estimates for the South Bend Bluff Estates RIAD (approx. 4,805 LF) provided by McLane Consulting, August 20, 2021 (see Exhibit 4, pages 15 & 16).



Page -3-

Date: December 22, 2021

RE: R2022-001

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**Project Background:**

The total project is estimated to cost \$770,164.26. This includes direct costs of \$691,450.33, a 10 percent KPB project contingency of \$69,145.03 per KPB 14.31.060(2)(a), and indirect administrative costs of \$9,568.90. There are 51 benefited parcels within this district.

KPB 14.31.120 requires the method of assessment shall be an allocation of costs on a per parcel basis so that each benefited parcel is charged an equal amount. The per-parcel cost is estimated to be \$7,550.63. Equal allocation is reasonable because the benefit of access to the improvement is the same for all parcels.

Pursuant to KPB 14.31.080(A)(1), a special assessment district may not be formed if the estimated amount of the assessment to be levied against each parcel in the district exceeds 25 percent for paved improvements. Within this proposed district, there are zero parcels that exceed the 25 percent limitation.

This matter is now presented to the assembly for approval to proceed with the project.

**KENAI PENINSULA BOROUGH ROAD SERVICE AREA  
RESOLUTION 2021-006**

**A RESOLUTION APPROVING THE PETITION REPORT  
AND RECOMMENDING A BOROUGH MATCH FOR THE  
SOUTH BEND BLUFF ESTATES  
ROAD IMPROVEMENT ASSESSMENT DISTRICT**

- WHEREAS,** the road service area (RSA) board authorized funding to obtain an engineer's estimate under KPB 14.31.050(E) for the South Bend Bluff Estates Road Improvement Assessment District (RIAD) at its November 24, 2020, meeting; and
- WHEREAS,** the engineer's estimate is \$691,450.33 for the South Bend Bluff Estates RIAD (includes construction costs of \$598,615, and other costs such as a 10 percent design & engineering cost of \$59,861.50, and a 5 percent contract administrative and construction management cost of \$32,973.83); and
- WHEREAS,** in accordance with KPB 14.31.060(2)(a) a 10 percent project contingency cost of \$69,145.03, and a KPB administration fee of \$9,568.90 have been added to the engineers estimate bringing the total estimated project cost to \$770,164.26; and
- WHEREAS,** per KPB 14.31.050(I), the sponsor has provided the assessing department with written notice of intent to proceed with the project; and
- WHEREAS,** pursuant to KPB 14.31.060, the borough assessor or the assessor's designee, in consultation with RSA staff, has prepared and submitted a special assessment district Petition Report for the RSA board's consideration and approval prior to circulation; and
- WHEREAS,** pursuant to KPB 14.31.050(J), at least 10 days prior to the hearing date of this resolution, the KPB Assessing Department notified the proposed benefited parcel owners by general mail, describing the special assessment district and proposed improvement, providing a map of the proposed improvement, the date of the public hearing, and informing the recipients that the legal description of parcels within the proposed district as of the date the RSA board approves the resolution will be used to determine assessments, and any action to replat parcels within the proposed district must be completed and recorded before the date the RSA board approves the resolution; and
- WHEREAS,** KPB 5.20.170 established a borough match fund program for RIAD projects that upgrade existing roads. Pursuant to KPB 14.31.055(A), the RSA board may authorize up to 50 percent of the costs of a RIAD be defrayed from the borough match fund for any project that upgrades existing roads; and
- WHEREAS,** KPB 14.31.055(B) states a borough match may be considered on RIAD projects for: (1) pavement projects for existing roads which have been certified for borough maintenance, (2) pavement or gravel projects for existing roads, which do not meet borough standards in order that the road will be brought to borough standards, and



(3) pavement or gravel projects for existing substandard gravel roads, which have been certified for borough maintenance in order that the road will be brought to borough standards; and

**WHEREAS,** it is in the best interest of the road service area and borough residents to approve the petition report and recommend a borough match based on 14.31.055(D) criteria for the proposed RIAD and make a recommendation to the borough assembly regarding formation of the district;

**NOW, THEREFORE, BE IT RESOLVED BY THE KENAI PENINSULA BOROUGH ROAD SERVICE AREA BOARD:**

**SECTION 1.** The board approves the Petition Report for the proposed South Bend Bluff Estates RIAD.

**SECTION 2.** The board recommends the assembly form and proceed with the South Bend Bluff Estates RIAD as set forth in the attached Petition Report contingent upon the further requirements of KPB 14.31 being met. There are five (5) exhibits to the Petition Report which are also included. Those exhibits are:

- 1) Petition Information Sheet: provides a description of the proposed improvement, a description of the limitations on withdrawing a petition signature under KPB 14.31.070(E), and provides the name, address and daytime telephone number of the sponsor(s) of the petition;
- 2) Estimated assessment roll: a spreadsheet listing the tax parcel number, legal description, the assessed valuation, the assessment-to-value ratio and any required prepayment of assessment as set forth in KPB 14.31.080(A)(1), maximum assessment, the name of the record owner, and any delinquencies or other special assessments liens of each parcel in the proposed district; additionally, the total estimate cost of the project, an estimate of the amount to be assessed to each parcel, and the total number of parcels to be assessed;
- 3) Map of the proposed RIAD district and boundaries;
- 4) Memorandum from the Finance Director stating the method of financing, interest rate to be paid, and setting forth the number and frequency of payments; and
- 5) Summary of construction cost estimates for the South Bend Bluff Estates RIAD provided by McLane Consulting Inc., prepared August 20, 2021.

**SECTION 3.** The board approves expenditure of up to 50 percent (estimated to be \$385,082.13) from the RIAD Match Fund for the South Bend Bluff Estates RIAD. This RIAD includes the improvement and paving upgrade on that portion of Winridge Avenue (1,030 LF), Winridge Court (550), Wispen Avenue (850), Grant Avenue (1,710) and Southbend Court (665), for approximately 4,805 total lineal feet of roadway.

**SECTION 4.** The project scope of work provides road upgrades and paving to approximately 4,805 linear feet currently on the Road Service Area maintenance list.

**SECTION 5.** The board recommends that the borough proceed with the construction of the road improvement to a district encompassing 51 benefited parcels, as shown in Petition

Report Exhibit 3, the district map, contingent upon the further requirements of KPB Chapter 14.31 being met.

**SECTION 6.** The board makes the following findings required by KPB 14.31.055(D):

1. Standard: Whether it is economically feasible to improve the road to RSA certification standards.  
Finding: The entire project cost is estimated to be \$770,164.26. The project would provide pavement and reduce maintenance costs. The roads are in good condition, with no out of the ordinary costs for construction anticipated. Considering these factors, along with the funds available for RIAD matches, the project is economically feasible.
2. Standard: To what extent do the assessed values of the benefited properties support the scope of work for the project.  
Finding: Pursuant to KPB 14.31.080(A)(1), no lien may exceed 25 percent of the current assessed value of the parcel for pavement improvements. The attached spreadsheet, Petition Report Exhibit 2, shows that if the borough makes a 50 percent match, assessments for each parcel will be \$7,550.63. Parcels range in value from \$28,800 to \$809,500. Liens will exceed 25% of the current assessed value on five (5) parcels within the proposed district. Partial prepayments of assessments (liens) will be required on these parcels. However, the overall assessed values support the project.
3. Standard: The number of applications for projects received that year.  
Finding: This is the only application for projects received prior to the July 1, 2021, deadline.
4. Standard: The funds available in the Road Improvement Assessment District Match Fund.  
Finding: The balance of the RIAD Match Fund is \$963,910, which is sufficient to cover the match costs.
5. Standard: Whether an application for district formation has been previously filed and whether conditions have changed to make the project more feasible than in past application years.  
Finding: No application for district formation has been submitted for these roadways.
6. Standard: The number of residents served.  
Finding: The proposed RIAD serves an estimated 75 residents.
7. Standard: The number of parcels served.  
Finding: There are 51 parcels served.
8. Standard: The feasibility of the project's compliance with KPB 14.31.080(A) criteria regarding restrictions on formation.  
Finding: The project meets all the following feasibility criteria:



1. Does the assessment to assessed value ratio exceed 21 percent for gravel improvements to an existing road, or 25 percent for pavement improvements, or 40 percent for construction of a new road, of the current assessed value of the parcels?

Yes. There are five (5) properties within this RIAD whose assessment to assessed value ratio exceeds the 25 percent for pavement improvements restriction. Prepayments of assessments will be required, totaling \$803.15.

2. Are there parcels bearing more than 10 percent of the estimated costs of the improvement that are subject to unpaid, past-due borough property taxes?

No. Presently there are no parcels within this RIAD which are delinquent in payment of borough real property taxes.

3. Do unimproved parcels represent more than 40 percent of the assessed value within the district?

No. Of the 51 total properties within this residential neighborhood district, there are 10 parcels which are unimproved properties, a ratio of 3.95%.

4. For construction of new roads, does one owner own more than 40 percent of the parcels to be benefited?

N/A.

9. Standard: Whether there is alternate access to properties serviced by the roads and the condition of that alternate access.

Finding: There are no alternate accesses to South Bend Bluff Estates.

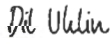
**SECTION 7.** That this resolution takes effect immediately and a copy of this resolution be forwarded to the mayor and assembly.

**ADOPTED BY THE KENAI PENINSULA BOROUGH ROAD SERVICE AREA BOARD  
ON THIS 14TH DAY OF SEPTEMBER, 2021.**



Robert Ruffner, Road Service Area Board Chair

ATTEST:



Dil Uhlir, Roads Service Area Director



## Office of the Borough Clerk

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

Johni Blankenship, MMC  
Borough Clerk

### CERTIFICATION OF PETITION

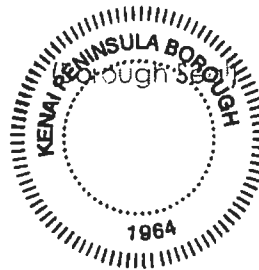
#### South Bend Bluff Estates Road Improvement Assessment District

A petition for formation of the South Bend Bluff Estates Road Improvement Assessment District was received in the Office of the Borough Clerk on November 1, 2021. I hereby certify the petition as sufficient per the requirements set forth in KPB 14.31.070(D). Signatures of owners of record of at least 60% of the total number of parcels subject to the assessment were required as well as at least 60% in value of the property to be benefited. Signatures of property owners of 40 parcels (78.43%) were validated representing 84.15% of the assessed value of the property being benefited.

A Check in the amount of \$8,200.00 was received by the Special Assessment Coordinator on December 2, 2020 as required by KPB 14.31.050(G).

Dated this 1st day of November, 2021.

Johni Blankenship, MMC  
Borough Clerk



cc: Justin Baldwin (Justin\_L\_Baldwin@yahoo.com) (RIAD Sponsor)  
Marie Payfer, KPB Special Assessment Coordinator  
KPB Assembly President Johnson and Members of the Assembly  
KPB Mayor Charlie Pierce



# Kenai Peninsula Borough

## Assessing Department

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### MEMORANDUM

TO: Robert Ruffner, Road Service Area Board Chairman  
Members, Kenai Peninsula Borough Road Service Area Board

FROM: Dil Uhlin, Road Service Area Director  
Marie Payfer, Special Assessment Coordinator *MP*

DATE: November 24, 2020

RE: South Bend Bluff Estates RIAD Engineer's Estimate RSA Staff Report

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In accordance with KPB 14.31.050(D), the following staff report is provided to the road service area (RSA) board for its consideration in evaluating the application for petition and determining whether the engineer's estimates for the following road improvement assessment district (RIAD) project should be funded through the Engineer's Estimate Fund established under KPB 5.20.160. Applications must be received by July 1 of each year (KPB 14.31.040), and petitions must be reviewed by September 1 of each year for construction in the following year (KPB 14.31.050(E)). The original application for the South Bend Bluff Estates RIAD was received on September 24, 2020, and a revised application was received on October 14, 2020, see Attachment #1. This project will be scheduled for year of construction in 2022.

The following is an analysis of the criteria the board must consider when it determines whether to appropriate money from the fund:

#### SECTION 1. APPLICATION:

SPONSOR: Justin Baldwin

SUBJECT ROADS: Located within the RSA West Region, Unit 7, the proposed district would include the west portion of Winridge Avenue at 1,100 linear feet (LF), Grant Avenue at 1,720 LF, Winridge Court at 550 LF, Southbend Court at 673 LF, and Wispen Avenue at 820 LF, for a total road length of approximately 4,863 LF. All roads are currently certified for road maintenance. The proposed project would benefit fifty-one (51) residential properties. See Attachment #2, District Map.

SCOPE: The application requests that the subject roads be improved and paved.

#### SECTION 2. KPB 14.31.080(A)(3) & (4) RESTRICTIONS ON FORMATION:

Pursuant to KPB 14.31.050(D), staff must prepare an initial report for the RSA board to consider for approval of an order for the engineer's estimate regarding the proposed project, based on the proposed boundaries (see attached map) and a review of 14.31.080(A)(3) and (4) restrictions on formation for the proposed project.

14.31.080(A)(3) *Do unimproved parcels represent more than 40 percent of the assessed value within the district?*

No. There are ten (10) unimproved parcels in this proposed district, representing 19.61% of the district properties. Forty-one (41) parcels within this district are improved residential properties, for a total of fifty-one (51) parcels.

14.31.080(A)(4) *If this project is for construction of new roads, does one owner own more than 40% of the parcels to be benefited?*

This project is not for construction for new roads.

### **SECTION 3. KPB 14.31.050(E) RSA BOARD CRITERIA:**

Pursuant to KPB 14.31.050(E), the RSA board shall consider the following factors in evaluating petition applications and determining whether to approve an order for an engineer's estimate:

1. *Whether the roads are currently on the maintenance system.*  
All roadways within this proposed project are on the KPB maintenance system. The proposed project is to improve and pave the road and bring the road up to Borough road standards.
2. *The number of petitions for projects received that year.*  
This is the first petition (application) for projects received for the 2020 calendar year, however, the application was received after the July 1 deadline to meet construction for 2021. If approved, this project would be constructed in 2022.
3. *The funds available in the RIAD Engineer's Estimate Fund established under KPB 5.20.160.*  
It is estimated that the RIAD application fee of \$8,200 will cover the engineers estimate. The current balance in the RSA's Engineer's Estimate Fund is \$12,000.
4. *Whether an application for district formation has been previously filed and whether conditions have changed that make the project more feasible than in past application years.*  
This project has not been subject to a previous application for a special assessment district formation.

### **ADDITIONAL COMMENTS:**

The sponsor has visited with the owners of several benefited parcels included in the proposed district and believes he will be able to obtain the required signature thresholds for support of the project.

Pursuant to KPB 14.31.040, the application must be received no later than July 1 of each year, and reviewed by the RSA Board prior to September 1, for consideration for construction for the following calendar year. As this application was received after July 1, 2020, the year of construction would be for calendar year 2022.

Parcel 055-423-21: The intersection at Grant Avenue and Southbend Court is included in the district boundaries for paving. Paving this intersection will include the driveway entrance to 47428 Grant Avenue. This parcel has been included in the district as a benefited parcel. See Attachment #3 & #4.

Parcel 055-423-22: It has been determined that this property will not benefit directly from the proposed improvement and is therefore not included in the district. The property located at 47488 Augusta National Road, is currently being served directly by Augusta National Road. The improvement will end prior to contact with this parcel's northwest corner boundary. See Attachment #4.



**RECOMMENDATION:**

South Bend Bluff Estates RIAD appears to be viable based on the substantial support for the project. Code requirements have been satisfied in regards to unimproved parcel ratio and ownership restriction percentages. The assessed value of the parcels appears sufficient to support the maximum assessment lien the equivalent of which is 25 percent of a parcel's value for paving projects, but that cannot be confirmed until a preliminary cost estimate is obtained. As of this date, zero parcels are delinquent in real property taxes. Therefore, it is recommended that the RSA board approve to order an engineer's estimate for this proposed project.

Your consideration is appreciated.

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**PETITION REPORT**  
**SOUTH BEND BLUFF ESTATES**  
**ROAD IMPROVEMENT ASSESSMENT DISTRICT (RIAD)**

In accordance to KPB Code Chapter 14.31, this petition proposes a road improvement assessment district (RIAD) be formed in the area of Kalifornsky, for the purpose of improving and paving a total road length of 4,805 linear feet (LF) of the subject roads of South Bend Bluff Estates. A map showing the parcels to be assessed is attached to the Petition Report as Exhibit 3. The project would benefit 51 parcels.

**Project proposal:** This RIAD includes the improvement and paving upgrade on that portion of Winridge Avenue (1,030 LF), Winridge Court (550), Wispen Avenue (850), Grant Avenue (1,710) and Southbend Court (665), for approximately 4,805 total lineal feet of roadway. The engineer's estimate for the total cost of construction is \$691,450.33, which includes the 2022 estimated construction cost of \$598,615, a 10 percent design and development cost of \$59,861.50, and a 5 percent contract administration and construction management cost of \$32,973.83. Added to the engineer's estimate is a 10 percent project contingency cost of \$69,145.03 (in accordance with KPB 14.31.060(2)(a)), and a KPB Administration Fee cost of \$9,568.90. **The total estimated project cost is \$770,164.26.** Accordingly, after accounting for a maximum RSA Match of 50% (*if approved, and contingent on the availability of funds*), the total estimated project cost for the **benefited parcels is \$385,082.13.** The proposed method of cost allocation is by equal assessment to each of the 51 benefited parcels. **The allocated cost per parcel is estimated at \$7,550.63.** See Exhibit 2 of the Petition Report, estimate assessment roll, for project cost calculation.

**This Petition Report is supported by the attached exhibits:**

- 1) Petition Information Sheet: provides a description of the proposed improvement, a description of the limitations on withdrawing a petition signature under KPB 14.31.070(E), and provides the name, address and daytime telephone number of the sponsor(s) of the petition;
- 2) Estimate assessment roll: a spreadsheet listing the tax parcel number, legal description, the assessed valuation, the assessment-to-value ratio and any required prepayment of assessment as set forth in KPB 14.31.080(A)(1), maximum assessment, the name of the record owner, and any delinquencies or other special assessment liens of each parcel in the proposed district, the total estimate cost of the project, an estimate of the amount to be assessed to each parcel, and the total number of parcels to be assessed; and
- 3) Map of the proposed RIAD district and boundaries;
- 4) Memorandum from the Finance Director stating the method of financing, interest rate to be paid, and setting forth the number and frequency of payments.
- 5) Summary of construction cost estimates for the South Bend Bluff Estates RIAD provided by McLane Consulting, Inc., prepared August 20, 2021.

**RIAD sponsor(s):**

BALDWIN, JUSTIN	47677 GRANT AVE, KENAI AK 99611	(907) 398-7624	Justin_L_Baldwin@yahoo.com
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**ROAD IMPROVEMENT ASSESSMENT DISTRICT (RIAD)  
PETITION INFORMATION SHEET  
SOUTH BEND BLUFF ESTATES RIAD**

In accordance to KPB Code Chapter 14.31, this petition proposes a road improvement assessment district (RIAD) be formed in the area of Kalifornsky, for the purpose of improving and paving a total road length of 4,805 linear feet (LF) of the subject roads of South Bend Bluff Estates. A map showing the parcels to be assessed is attached to the Petition Report (PR) as PR Exhibit 3. The project would benefit 51 parcels.

**Project proposal:** This RIAD includes the improvement and paving upgrade on that portion of Winridge Avenue (1,030 LF), Winridge Court (550), Wispen Avenue (850), Grant Avenue (1,710) and Southbend Court (665), for approximately 4,805 total lineal feet of roadway. The engineer's estimate for the total cost of construction is \$691,450.33, which includes the 2022 estimated construction cost of \$598,615, a 10 percent design and development cost of \$59,861.50, and a 5 percent contract administration and construction management cost of \$32,973.83. Added to the engineer's estimate is a 10 percent project contingency cost of \$69,145.03 (*in accordance with KPB 14.31.060(2)(a)*), and a KPB Administration Fee cost of \$9,568.90. **The total estimated project cost is \$770,164.26.** Accordingly, after accounting for a maximum RSA Match of 50% (*if approved, and contingent on the availability of funds*), the total estimated project cost for the **benefited parcels is \$385,082.13.** The proposed method of cost allocation is by equal assessment to each of the 51 benefited parcels. **The allocated cost per parcel is estimated at \$7,550.63.** See PR Exhibit 2, estimate assessment roll, for project cost calculation.

Additionally, with regard to each benefited parcel, PR Exhibit 2 (the estimate assessment roll) contains the tax parcel number, name of record owner, legal description, assessed value, estimated amount of special assessment, the existence of other special assessment liens (if any), and any violations of the assessment to value ratio per KPB 14.31.080(A).

**The sponsor of this RIAD petition is:**

BALDWIN, JUSTIN	47677 GRANT AVE, KENAI AK 99611	(907) 398-7624	Justin_L_Baldwin@yahoo.com
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**What costs are covered:** The estimated assessment will only cover the cost to improve and pave the public right-of-way of the above-mentioned roadways, not the private driveways to individual benefited parcels. For private existing driveways, the engineer's report and design includes: (a) for gravel/dirt driveways, a 2' apron from the road shoulder; and (b), for existing paved driveways, a paved uniform transition from the road shoulder to the standard transition match point, or edge of right-of-way.

**Assessment lien and lien restrictions:** The cost will be assessed in the form of a recorded lien on the benefited parcel. The lien will remain on the property until the assessment has been paid in full. In no case may a property be assessed (liened) an amount in excess of 25% of the current assessed value of the property for a paving improvement. For the purpose of this restriction, the estimated amount of the special assessment against a parcel will be reduced by the amount of a partial *prepayment* of the assessment, to reduce the assessment (lien amount) to less than or equal to 25% of the property's assessed value.

Within this district, there are five (5) parcels which are affected by the assessment to value lien limit restriction. See PR Exhibit 2, Estimate Assessment Roll, for those parcels affected by this restriction, under column headed "Required Prepays".

**Payment options:** The cost assessed can be paid in full, or in 10 annual installments with interest to accrue on the unpaid amount of the assessment. The assessment may be paid at any time prior to the 10 year period without penalty. Interest will be added to any assessments not paid within 30 days of the date of mailing the Notice of Assessment (occurs after construction). The interest rate charged is the ***\*prime rate plus 2% (\*as of the date the ordinance confirming the assessment roll is enacted by the assembly)***, and is fixed for the life of the loan. The penalty for delinquent installment and assessment payments is the same as the penalty for delinquent real property taxes in effect on the date of the delinquency. The lien will remain on the parcel until the debt has been paid in full.

**Legal description of parcels:** The legal description of the parcels subject to the special assessment within the proposed RIAD was established as of the date of the RSA resolution to approve the petition report and recommend a borough match. **The RSA Board approved RSA Resolution 2021-xx on September 14, 2021.** Any action to replat parcels within the proposed RIAD must have been completed and recorded before the date the RSA board approved the resolution. No further subdivision, reversion of acreage, or lot line adjustment will be recognized for RIAD assessment purposes after the RSA board issues the resolution.

**Important information regarding subdividing benefited properties:** pursuant to KPB 14.31.080(B), if a property owner seeks to subdivide a benefited parcel after the date of the RSA resolution or after costs are assessed, the property owner will be required to pay off the remaining balance of the assessment – or prepay estimated costs if the final assessment has not been determined – prior to approval of the final plat pursuant to KPB 20.60.030. Refunds of prepayments of assessments for plat approvals may apply: (a) if the RIAD petition or project should fail for any reason; (b) if the final plat is not approved pursuant to KPB 20.60.030 and the subdividing property request a refund within 30-days of the final assessment; or, (c) for any amount in excess of the prepaid estimated cost over the final assessment. The subdividing property owner will be responsible for payment if the estimate costs are less than the final assessment due within 30-days of the final assessment approval. See the KPB Finance Department for additional information.

**Deferral of Payment of Principle (only):** A deferment (e.g., postponement or delay) of payment of principle only, may be available to a qualifying owner of a benefited property. Some qualification are: • the property must be owned and occupied as the primary residence of the application; • the owner must be economically disadvantaged; and • interest will accrue and must be paid annually. Applications and annual renewals (to verify qualifying conditions continue to exist) must be submitted to the Finance Department by February 1. See the Finance Department for all restrictions and requirements for the deferment of principle option.

**Petition signature thresholds:** This petition proposes to assess all of the benefited parcels equally. In order to qualify, the petition must have the signatures of the owners of record of (a) at least 60% of the total number of parcels subject to assessment within the proposed RIAD, *and* (b) at least 60% in value of the property to be benefited. **Approval of the project is signified by properly signing and dating the Petition Signature Page.** Failure to secure enough signatures to meet these thresholds will cause the petition to fail.



**Petition signature requirements:** An owner's signature represents a **VOTE IN FAVOR** of the project. All signatures must be made in ink, dated properly, and the completed Petition Signature Page must be returned to the RIAD sponsor in a timely manner to meet the petition deadline. For parcels with joint ownership *each owner of record must sign and date the petition*. If a joint owner is deceased a copy of the death certificate must be provided. Refer to page 2 of the ***Petition Signature Page*** (included) for additional instructions.

**Signature withdrawal, KPB 14.31.070(E):** A signature on a petition may be withdrawn only by written notice from the signer submitted to the assessing department *prior* to the final filing of the completed petition signature pages by the sponsor. *A withdrawal is effective only if written notice of the withdrawal is submitted before the filing of the completed petition to the assessing department.* This restriction does not preclude the property owners from filing an objection as to the necessity of formation of the district as provided in KPB 14.31.090(D).

**Deadline for signatures:** The sponsor will be responsible to file the completed petition (signed & dated *Petition Signature Pages*) to the assessing department within *45 days of the date on which the assessing department distributes the final petition to the sponsor* for distribution to all property owners. Benefited property owners should **contact the RIAD sponsor(s)** with any questions regarding the **petition deadline**.

**Certification of petition:** Once the sponsor files the completed petition with the assessing department, the borough clerk shall determine whether the petition contains sufficient signatures as required. If the petition meets the required signature thresholds, the borough clerk shall certify the petition and submit the petition to the mayor for preparation of a resolution to form the district and proceed with the improvement.

**ONLY the *Petition Signature Page* needs to be returned to the RIAD sponsor(s):**

BALDWIN, JUSTIN	47677 GRANT AVE, KENAI AK 99611	(907) 398-7624	Justin_L_Baldwin@yahoo.com
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For additional information, contact:

**Marie Payfer**, KPB Special Assessment Coordinator

Direct: 907-714-2250 or Email: [mpayfer@kpb.us](mailto:mpayfer@kpb.us)

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# SOUTH BEND BLUFF ESTATES RIAD - ESTIMATE ASSESSMENT ROLL

Resolution to Form the District and Proceed with the Improvement  
Ordinance of Appropriation

RIAD FILING FEE: \$8,200  
Received on December 2, 2020

PROJECT COSTS	ESTIMATE COST
Gravel Construction Cost:	598,615.00
Construction Contingency (5%):	32,973.83
Construction Cost Subtotal:	631,588.83
Engineering Design (10%):	59,861.50
Total Construction Cost:	691,450.33
RIAD Project Contingency (10%):	69,145.03
Filing Fee Adjustment:	0.00
KPB Administration Cost:	9,568.90
Total Project Cost:	770,164.26
Less Road Service Area Match (50%):	385,082.13
Final Cost to Parcel Owners:	385,082.13
Number of Benefited Parcels:	51
Cost Per Parcel:	7,550.63

Total Assessed Value: 2021 Assessed Values  
Lien limit per parcel: Cannot exceed 25% of Assessed Value, per 14.31.080(A)(1)

Total Estimated Project Cost: 385,082.13  
Less any required pre-payment: (803.15) Paid 12/13/2021  
Total Estimated Assessments: 384,278.98

Total number of parcels in district: 51  
Total number parcels in Favor: 40  
Percentage of parcels in Favor: 78.43% ≥ 60% 14.31.070(D)(a)  
Percentage of parcels in Favor, 2021 AV: 84.15% ≥ 60% 14.31.070(D)(b)  
Percentage of parcels w/Delinquent RP Taxes: 2% <10% per 14.31.080(2)  
Unimproved parcels AV / District AV: 3.95% <40% per 14.31.080(3)

PARCEL ID	LEGAL	2021 ASSESSED VALUE	MAXIMUM ASSESSMENT	REQUIRED PREPAYS	PREPAYMENTS AMOUNTS	Ck#/Date	OWNER	ADDRESS	CITY ST ZIP	VOTED IN FAVOR	A.V. OF VOTES IN FAVOR	TAX DELINQ	OTHER SPC ASSMT
055-421-13	T 5N R 11W SEC 14 SEWARD MERIDIAN KN 0850122 WINRIDGE ESTATES SUB PART 1 LOT 1 BLK 11	187,300	7,550.63	0.00			MICCHICHE PETER ANDREW	PO BOX 1544	SOLDOTNA, AK 99669	YES	187,300	NO	NO
055-421-14	T 5N R 11W SEC 14 SEWARD MERIDIAN KN 0850122 WINRIDGE ESTATES SUB PART 1 LOT 2 BLK 11	585,100	7,550.63	0.00			PITSILIONIS JOANNA	PO BOX 151	KENAI, AK 99611	YES	585,100	NO	NO
055-421-33	T 5N R 11W SEC 14 & 23 SEWARD MERIDIAN KN 0850122 WINRIDGE ESTATES SUB PART 1 LOT 1 BLK 6	532,700	7,550.63	0.00			SMITH CARI & ANDREW	47457 WINRIDGE AVE	KENAI, AK 99611	YES	532,700	NO	NO
055-421-36	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 0850122 WINRIDGE ESTATES SUB PART 1 LOT 4 BLK 6	306,600	7,550.63	0.00			MENAPACE ROENA F	47410 AUGUSTA NATIONAL RD	KENAI, AK 99611	YES	306,600	NO	NO
055-421-37	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 0850122 WINRIDGE ESTATES SUB PART 1 LOT 5 BLK 6	466,300	7,550.63	0.00			NAYLOR MARRIE A & BOBBY B	47468 WISPEN AVE	KENAI, AK 99611	YES	466,300	NO	NO
055-421-38	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 0850122 WINRIDGE ESTATES SUB PART 1 LOT 6 BLK 6	281,500	7,550.63	0.00			SMITH PUSSADEE & DAVID P	47485 WINRIDGE AVE	KENAI, AK 99611	YES	281,500	NO	NO
055-421-39	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 0850122 WINRIDGE ESTATES SUB PART 1 LOT 6 BLK 5	319,600	7,550.63	0.00			COLEMAN LACEY D & KYLE A	PO BOX 2	SOLDOTNA, AK 99669	YES	319,600	NO	NO
055-421-44	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 0850122 WINRIDGE ESTATES SUB PART 1 LOT 1 BLK 5	28,800	7,200.00	350.63	350.63	266749 12/13/2021	MILLER TERA N & JARED J	PO BOX 404	SANTAQUIN, UT 84655		0	NO	NO
055-423-01	T 5N R 11W SEC 14 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 1 BLK 1	585,400	7,550.63	0.00			SMITH KEVIN R & TERESA M	47726 GRANT AVE	KENAI, AK 99611	YES	585,400	NO	NO
055-423-02	T 5N R 11W SEC 14 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 2 BLK 1	606,700	7,550.63	0.00			DUNAWAY ELONA & KYLE	57686 GRANT AVE	KENAI, AK 99611	YES	606,700	NO	NO
055-423-03	T 5N R 11W SEC 14 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 3 BLK 1	135,100	7,550.63	0.00			GABRIEL TERRRYA & JOSEPH	36796 DOWN CIR	KENAI, AK 99611	YES	135,100	NO	NO
055-423-04	T 5N R 11W SEC 14 & 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 4 BLK 1	492,900	7,550.63	0.00			OMAN RONALD P & MARY TRUST	PO BOX 75	KENAI, AK 99611	YES	492,900	NO	NO
055-423-05	T 5N R 11W SEC 14 & 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 5 BLK 1	579,300	7,550.63	0.00			WILSON, GREGORY C	19110 WAR ADMIRAL RD	EAGLE RIVER, AK 99577	YES	579,300	NO	NO
055-423-06	T 5N R 11W SEC 14 & 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 6 BLK 1	138,500	7,550.63	0.00			CUNNINGHAM DENA R & SCOTT M	37100 EDGEWOOD DR	KENAI, AK 99611	YES	138,500	NO	NO
055-423-07	T 5N R 11W SEC 14 & 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 7 BLK 1	133,400	7,550.63	0.00			CUNNINGHAM DENA R & SCOTT M	37100 EDGEWOOD DR	KENAI, AK 99611	YES	133,400	NO	NO

Estimate Assessment Roll

South Bend Bluff Est RIAD

KPB Assessing Dept. (Page 1 of 4)

EXHIBIT 4

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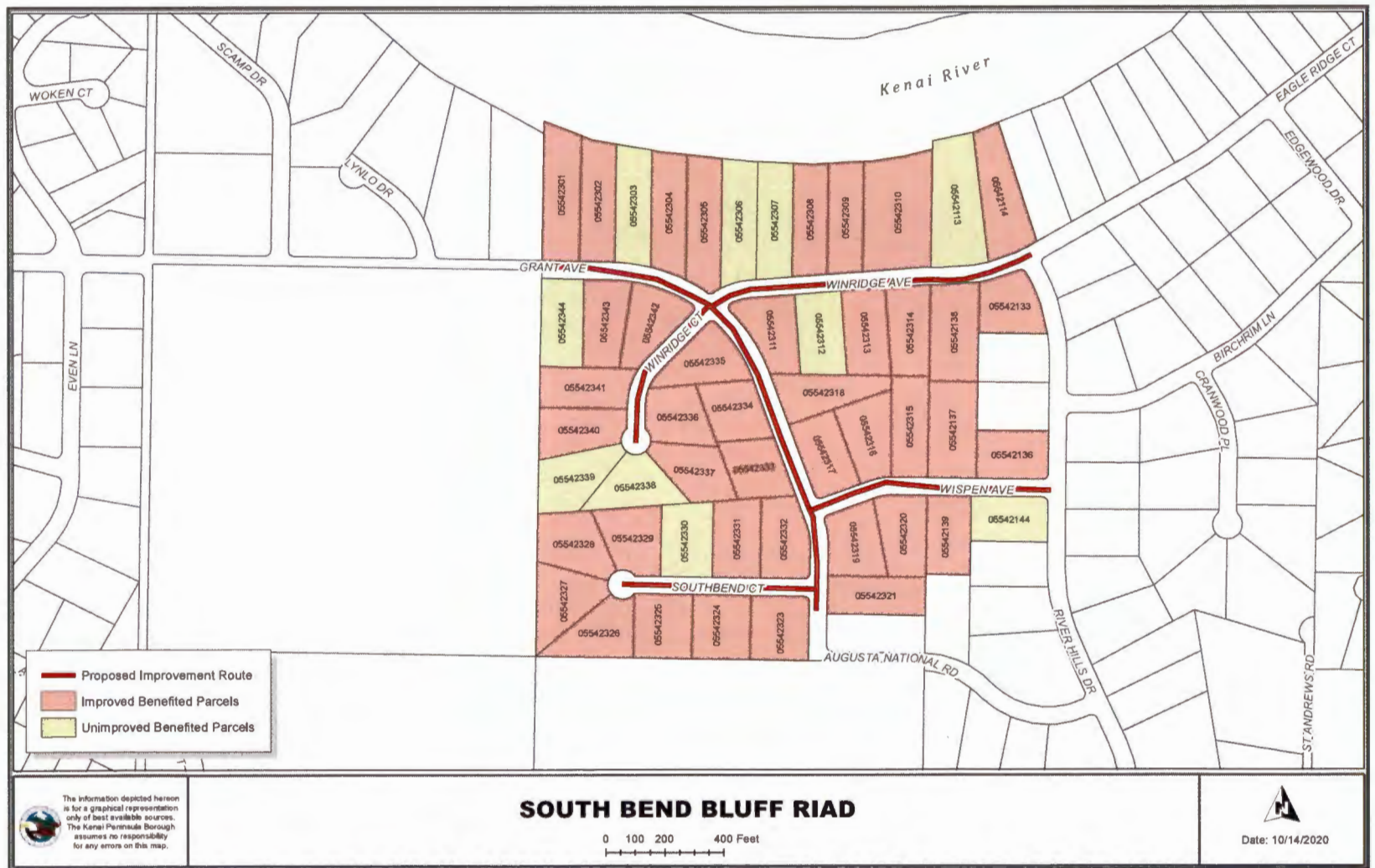
PARCEL ID	LEGAL	2021 ASSESSED VALUE	MAXIMUM ASSESSMENT	REQUIRED PREPAYS	PREPAYMENTS AMOUNTS	Clk/Date	OWNER	ADDRESS	CITY ST ZIP	VOTED IN FAVOR	A.V. OF VOTES IN FAVOR	TAX DELINQ	OTHER SPC ASSMT
055-423-08	T 5N R 11W SEC 14 & 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 8 BLK 1	527,500	7,550.63	0.00			CARTER SUE C	PO BOX 212	KENAI, AK 99611	YES	527,500	NO	NO
055-423-09	T 5N R 11W SEC 14 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 9 BLK 1	551,500	7,550.63	0.00			MARTIN KAREN M & DAVID R	PO BOX 468	CLAM GULCH, AK 99568	YES	551,500	NO	NO
055-423-10	T 5N R 11W SEC 14 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 10 BLK 1	255,500	7,550.63	0.00			O'GUINN SHELLEY L & GEORGE C	PO BOX 1501	SOLDOTNA, AK 99669		0	NO	NO
055-423-11	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 1 BLK 2	524,100	7,550.63	0.00			MARTIN, JANELLE MCKEOWN, SEAN PERRY	44482 FRONTIER AVE	SOLDOTNA, AK 99669	YES	524,100	NO	NO
055-423-12	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 2 BLK 2	30,000	7,500.00	50.63	50.63	266749 12/13/2021	O'GUINN SHELLEY & GEORGE	PO BOX 1501	SOLDOTNA, AK 99669		0	NO	NO
055-423-13	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 3 BLK 2	809,500	7,550.63	0.00			O'GUINN SHELLEY & GEORGE	PO BOX 1501	SOLDOTNA, AK 99669		0	NO	NO
055-423-14	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 4 BLK 2	371,100	7,550.63	0.00			O'GUINN GEORGE	PO BOX 1501	SOLDOTNA, AK 99669		0	NO	NO
055-423-15	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 5 BLK 2	413,500	7,550.63	0.00			ZIBELL NIKKI J & DARREN D	47488 WISPEN AVE	KENAI, AK 99611	YES	413,500	NO	NO
055-423-16	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 6 BLK 2	715,800	7,550.63	0.00			O'GUINN LISA M & ERIC C	47498 WISPEN AVE	KENAI, AK 99611	YES	715,800	NO	NO
055-423-17	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 7 BLK 2	425,800	7,550.63	0.00			WOOD JENNIFER & WILLIAM	47468 GRANT AVE	KENAI, AK 99611	YES	425,800	NO	NO
055-423-18	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 8 BLK 2	518,700	7,550.63	0.00			GODSEY SARAH & MILES ALEKSANDR	PO BOX 2128	SOLDOTNA, AK 99669		0	NO	NO
055-423-19	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 1 BLK 3	444,600	7,550.63	0.00			RANEY TONYA S & STEPHEN E	47448 GRANT AVE	KENAI, AK 99611	YES	444,600	NO	NO
055-423-20	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 2 BLK 3	508,800	7,550.63	0.00			DODGE MARY K & DONALD J	4910 WOODRIDGE CIR	ANCHORAGE, AK 99516	YES	508,800	NO	NO
055-423-21	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 3 BLK 3	332,000	7,550.63	0.00			BRIGGS DUSTIN J SANDNESS SKYLA R	47428 GRANT AVE	KENAI, AK 99611	YES	332,000	NO	NO
055-423-23	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 22 BLK 4	342,200	7,550.63	0.00			O'GUINN SHELLEY L & GEORGE C	PO BOX 1501	SOLDOTNA, AK 99669		0	NO	NO
055-423-24	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 21 BLK 4	342,200	7,550.63	0.00			O'GUINN SHELLEY L & GEORGE C	PO BOX 1501	SOLDOTNA, AK 99669		0	NO	NO
055-423-25	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 20 BLK 4	338,800	7,550.63	0.00			O'GUINN SHELLEY & GEORGE	PO BOX 1501	SOLDOTNA, AK 99669		0	NO	NO
055-423-26	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 19 BLK 4	419,400	7,550.63	0.00			CRAWFORD LORRAINE F & WARREN D JR	47569 SOUTHEND CT	KENAI, AK 99611	YES	419,400	NO	NO
055-423-27	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 18 BLK 4	439,800	7,550.63	0.00			ENGSTROM NICOLE & DANIEL	47589 SOUTHEND CT	KENAI, AK 99611	YES	439,800	NO	NO
055-423-28	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 17 BLK 4	307,800	7,550.63	0.00			WALSH CAROL M & CLINTON R	47578 SOUTHEND CT	KENAI, AK 99611	YES	307,800	NO	NO
055-423-29	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 16 BLK 4	560,700	7,550.63	0.00			VILLEGAS JANICE M & ANDEW	47558 SOUTHEND CT	KENAI, AK 99611	YES	560,700	NO	NO
055-423-30	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 15 BLK 4	30,000	7,500.00	50.63	50.63	266749 12/13/2021	CHRISTOPHER GRANT T	PO BOX 3633	SOLDOTNA, AK 99669		0	NO	NO



PARCEL ID	LEGAL	2021 ASSESSED VALUE	MAXIMUM ASSESSMENT	REQUIRED PREPAYS	PREPAYMENTS AMOUNTS	Chk#/Date	OWNER	ADDRESS	CITY ST ZIP	VOTED IN FAVOR	A.V. OF VOTES IN FAVOR	TAX DELINQ	OTHER SPC ASSMT
055-423-31	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 14 BLK 4	334,300	7,550.63	0.00			GOFORTH DONALD L	47518 SOUTHBEND CT	KENAI, AK 99611	YES	334,300	NO	NO
055-423-32	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 13 BLK 4	467,100	7,550.63	0.00			HUNTER ROBERT L	47445 GRANT AVE	KENAI, AK 99611	YES	467,100	NO	NO
055-423-33	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 12 BLK 4	519,200	7,550.63	0.00			MCKINLEY CAITLIN E & MARK R	47465 GRANT AVE	KENAI, AK 99611	YES	519,200	NO	NO
055-423-34	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 11 BLK 4	387,000	7,550.63	0.00			ROLPH LISA M & ZACHARY M	47485 GRANT AVE	KENAI, AK 99611	YES	387,000	NO	NO
055-423-35	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 10 BLK 4	518,500	7,550.63	0.00			WEBER MICHAEL R & APRIL D	47589 WINRIDGE CT	KENAI, AK 99611	YES	518,500	NO	NO
055-423-36	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 9 BLK 4	429,600	7,550.63	0.00			TITUS CARRIE S & CHRISTOPHER J	47619 WINRIDGE CT	KENAI, AK 99611	YES	429,600	NO	NO
055-423-37	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 8 BLK 4	416,000	7,550.63	0.00			HUNTLEY ARNOLD L	47649 WINRIDGE CT	KENAI, AK 99611	YES	416,000	NO	NO
055-423-38	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 7 BLK 4	29,200	7,300.00	250.63	250.63	266749 12/13/2021	VILLEGAS JANICE & ANDREW	47558 SOUTHBEND CT	KENAI, AK 99611	YES	29,200	YES	NO
055-423-39	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 6 BLK 4	30,700	7,550.63	0.00			CHRISTOPHER GRANT T	PO BOX 3633	SOLDOTNA, AK 99669		0	NO	NO
055-423-40	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 5 BLK 4	490,500	7,550.63	0.00			BERG MERCEDES & TIMOTHY R II	47628 WINRIDGE CT	KENAI, AK 99611	YES	490,500	NO	NO
055-423-41	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 4 BLK 4	424,800	7,550.63	0.00			SCHNEIDERS JAMES CL	47608 WINRIDGE CT	KENAI, AK 99611	YES	424,800	NO	NO
055-423-42	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 3 BLK 4	441,300	7,550.63	0.00			TRUJILLO RAMONA Z & JOSEPH L	47588 WINRIDGE AVE	KENAI, AK 99611	YES	441,300	NO	NO
055-423-43	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 2 BLK 4	433,600	7,550.63	0.00			BALDWIN CHRISTA M & JUSTIN L	47677 GRANT AVE	KENAI, AK 99611	YES	433,600	NO	NO
055-423-44	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 1 BLK 4	29,800	7,450.00	100.63	100.63	266749 12/13/2021	BALDWIN CHRISTA M & JUSTIN L	47677 GRANT AVE	KENAI, AK 99611	YES	29,800	NO	NO
51		19,540,100	384,278.98	803.15	803.15	Paid in Full	as of 12/9/2021			40	16,442,600	1	
# Parcels		5 # of Prepayments required											

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Kenai Peninsula Borough  
Finance Department

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**MEMORANDUM**

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

**THRU:** Charlie Pierce,  
Kenai Peninsula Borough Mayor

**FROM:** Brandi Harbaugh, Finance Director

**DATE:** 8/26/2021

**RE:** South Bend Bluff Estates Road Utility Special Assessment District (RIAD)  
Financing

The Borough plans to provide the funds necessary to finance the South Bend Bluff Estates RIAD from internal sources. KPB 5.10.040 allows the investment of borough monies in special assessment districts that are authorized under KPB 14.31. The total of such investments is limited to not more than \$5,000,000 at the end of any fiscal year. As of August 26, 2021, the borough has \$942,142 invested in special assessment districts. If approved, the \$770,165 projected for the South Bend Bluff Estates RIAD, (RIAD), will increase the total special assessment district investment to approximately \$1,712,307.

The owners of property located within the RIAD will be required to make principal and interest payments each year for a ten-year period to retire the indebtedness to the borough. The rate of interest will be equal to the prime rate (currently 3.25%) plus 2% or 5.25%. Property owners can avoid or reduce the interest charge by making accelerated payments on the principal. Penalties will not be imposed for accelerated payments. The assessment constitutes a lien on each parcel within the district.

**Kenai Peninsula Borough**  
 Currently Proposed USAD/RIAD Projects  
 8/26/2021

		Current Proposal	Outstanding Proposals
<b>Max Allowed</b>		<b>\$ 5,000,000</b>	<b>\$ 5,000,000</b>
<b>Current Balance(100.10706) as of:</b>			
	8/26/2021	942,142	942,142
<b>Previously Approved Projects:</b>			
None		-	-
<b>Projects Awaiting Approval:</b>			
South Bend Bluff Estates RIAD		770,165	770,165
<b>Total</b>		<b><u>\$ 1,712,307</u></b>	<b><u>\$ 1,712,307</u></b>



## 7.0 COST ESTIMATING

### 7.1 Construction Cost

Itemized construction costs are provided in standard ADOT format. Unit prices are based work completed in south central Alaska during the 2020 & 2021 construction seasons.

### 7.2 Cost Adjustments

This report includes a minimal inflation factor, as well as a recommended contingency factor. The inflation factor is applied to the individual unit prices. The contingency factor is applied to the total estimated cost, not individual unit prices.

### 7.3 Utility Conflicts

This report details few utility conflicts as utility locates were limited to test hole locations. Several minor utility conflicts should be expected as described in section 3.5. There may be several effective measures for dealing with the potential conflicts from actual relocation of lowering to design modifications. For the purpose of this estimate utility relocations costs have been excluded.

## 8.0 ENGINEER'S ESTIMATED COST

Description	Cost
RIAD Subtotal: Estimated Construction Cost	\$598,615.00
KPB Subtotal: Estimated Design, Inspection & Project Administration, 10% of Estimated Construction Cost	\$59,861.50
Project Subtotal:	\$658,476.50
Contingency, 5%:	\$32,973.83
<b>TOTAL ESTIMATED CONSTRUCTION COST</b>	<b>\$691,400.33</b>

Attach:        RIAD Map  
                 Unit Cost Schedule  
                 Typical Sections  
                 Soil Analysis, Test Hole Logs & Map

*mp* - Total Est. Cost: \$691,450.33

<b>Winridge Avenue, Winridge Court, Wispen Avenue, Grant Avenue, Southbend Court</b>
<b>2021 RIAD PROGRAM</b>

**ENGINEER'S ESTIMATED CONSTRUCTION COST - 8/20/2021**

Pay Item No.	Pay Item Description	Pay Unit	Quantity	Unit Bid Price	Amount Bid
<b>RIAD BASIC BID</b>					
110(1)	Existing Utilities in Construction Zone	Lump Sum	All Required	(LUMP SUM)	\$ 4,500.00
202(4)	Remove Culvert Pipe	Linear Foot	560	\$ 12.50	\$ 7,000.00
203(9A)	Roadbed Widening, 24' Wide	Station	25.90	\$ 1,850.00	\$ 47,915.00
203(9B)	Roadbed Widening, Cul-De-Sac	Each	2	\$ 3,800.00	\$ 7,600.00
203(10)	Embankment Construction, 24' Wide	Station	3.5	\$ 7,800.00	\$ 27,300.00
203(13)	Turnaround Construction - Grant Avenue	Each	1	\$ 6,500.00	\$ 6,500.00
301(1)	Aggregate Base Course, Grading D-1	Ton	1625	\$ 32.00	\$ 52,000.00
302(2A)	Subgrade Modification, 24' Wide, 6" Depth	Station	6.5	\$ 950.00	\$ 6,175.00
303(1)	Reconditioning	Station	38.05	\$ 500.00	\$ 19,025.00
401(1)	Asphalt Concrete, Type II, Class B	Ton	1480	\$ 130.00	\$ 192,400.00
603(1-15)	15 Inch Corrugated Steel Pipe	Linear Foot	990	\$ 55.00	\$ 54,450.00
605(1)	Drainage Gallery	Linear Foot	600	\$ 20.00	\$ 12,000.00
615(2)	Remove and Relocate Existing Sign	Each	8	\$ 250.00	\$ 2,000.00
618(1)	Seeding (Hydraulic Method)	Lump Sum	All Required	(LUMP SUM)	\$ 5,500.00
639(1)	Gravel Residence Driveway Transition	Each	26	\$ 500.00	\$ 13,000.00
639(4)	Paved Driveway Apron	Each	51	\$ 750.00	\$ 38,250.00
639(5A)	Paved Driveway	Each	25	\$ 2,000.00	\$ 50,000.00
640(1)	Mobilization And Demobilization	Lump Sum	All Required	(LUMP SUM)	\$ 15,000.00
641(1)	Erosion and Pollution Control Administration	Lump Sum	All Required	(LUMP SUM)	\$ 4,500.00
641(2)	Temporary Erosion and Pollution Control	Contingent Sum	All Required	(CONTINGENT SUM)	\$ 2,500.00
643(2)	Traffic Maintenance	Lump Sum	All Required	(LUMP SUM)	\$ 5,000.00
650(1)	Miscellaneous Work	Contingent Sum	All Required	(CONTINGENT SUM)	\$ 20,000.00
670(1)	Painted Traffic Markings	Lump Sum	All Required	(LUMP SUM)	\$ 6,000.00
<b>RIAD TOTAL ESTIMATED COST OF CONSTRUCTION</b>				<b>\$ 598,615.00</b>	

Prepared By:



Gina DeBardelaben, P.E.  
**McLane Consulting, Inc.**  
[gina@mcclanecg.com](mailto:gina@mcclanecg.com)

# Kenai Peninsula Borough

## Assessing Department

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### MEMORANDUM

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

**THRU:** Charlie Pierce, Mayor *CP*  
Adeena Wilcox, Director of Assessing *aw*

**FROM:** Marie Payfer, Special Assessment Coordinator *MP*

**DATE:** December 22, 2021

**RE:** Mayor's Report Resolution 2022-001, To Form the South Bend Bluff Estates Road Improvement Assessment District and Proceed with the Improvement (Mayor)

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### MAYOR'S REPORT

Property owners in the proposed South Bend Bluff Estates Road Improvement Assessment District ("RIAD") have worked with the borough administration to form the proposed RIAD. Pursuant to the requirements of KPB 14.31.065, on September 14, 2021, the Road Service Area ("RSA") Board adopted RSA Resolution 2021-006, approving the petition report before its circulation among benefited property owners, approving up to \$385,082.13 as the RSA match for this project, and recommending the formation of the district (see Exhibit 1).

This resolution to form the RIAD and proceed with the improvement approves the formation of the RIAD and authorizes the mayor to proceed with the construction of the improvement. This is the first step in a three-step process requiring assembly action for the RIAD: 1) resolution to form the district and proceed with the improvement; 2) ordinance of appropriation of funds; and, 3) ordinance of assessment.

KPB 14.31.070(D) requires the petition to contain the signatures of the owners of record of (a) at least 60 percent of the total number of parcels subject to assessment within the proposed district; and, (b) at least 60 percent in value of the property to be benefited, in order to be considered by the assembly for formation. A completed petition for the formation of the RIAD was received by the assessing department on November 1, 2021. On November 1, 2021, the borough clerk certified the petition with 40 of 51 property owners, 78.43 percent, supporting the proposed district and 84.15 percent of the value of the district (see Exhibit 2, Certification of Petition, and Exhibit 4, Estimate Assessment Roll). Additionally, the borough clerk sent all required notices to the property owners and published the required information concerning the proposed district as required by borough code.



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Date: December 22, 2021

RE: R2022-001

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The resolution is supported by the exhibits listed herein which provide the documentation required by code to support forming this RIAD and proceeding with construction.

Pursuant to KPB 14.31.090, the mayor shall prepare for assembly consideration a resolution to form the special assessment district and proceed with the improvement. The mayor shall submit with the resolution the following information, all of which is detailed in the referenced Exhibits to this memo.

- 1) RSA Resolution 2021-006, September 14, 2021, see Exhibit 1.
- 2) Certification of Petition, South Bend Bluff Estates RIAD, dated November 1, 2021, see Exhibit 2.
- 3) RSA Staff Report, dated November 24, 2020, a description of the current condition of the rights-of-way proposed for improvement and a statement of the need for the proposed local improvement, see Exhibit 3.
- 4) The petition report prepared by borough staff under KPB 14.31.060, updated to account for any change in information, see Exhibit 4. The petition report includes the following exhibits:
  - a) The petition information sheet which provided a description of the proposed improvement, and a description of the limitations on withdrawing a petition signature under KPB 14.31.070(E) (see Exhibit 4, pages 3-5).
  - b) The estimate assessment roll spreadsheet which provides the legal description of the benefited parcels, the name of the record owner, the total estimated cost of the project, an estimate of the amount to be assessed to each parcel, the status of tax payments, if there are other special assessment liens against any of the parcels in the proposed district, and a description of any benefited parcels that exceed the assessment-to-value ratio set forth in KPB 14.31.080(A)(1). There are no properties within this proposed district delinquent in payment of real property taxes, and no properties with other borough special assessment liens (see Exhibit 4, pages 7-10).
  - c) A map of the proposed RIAD district and boundaries (see Exhibit 4, page 11).
  - d) A memorandum from the Finance Director stating the method of financing, interest rate to be paid, and setting forth the number and frequency of payments (see Exhibit 4, pages 13 & 14).
  - e) Summary of construction cost estimates for the South Bend Bluff Estates RIAD (approx. 4,805 LF) provided by McLane Consulting, August 20, 2021 (see Exhibit 4, pages 15 & 16).

Page -3-

Date: December 22, 2021

RE: R2022-001

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**Project Background:**

The total project is estimated to cost \$770,164.26. This includes direct costs of \$691,450.33, a 10 percent KPB project contingency of \$69,145.03 per KPB 14.31.060(2)(a), and indirect administrative costs of \$9,568.90. There are 51 benefited parcels within this district.

KPB 14.31.120 requires the method of assessment shall be an allocation of costs on a per parcel basis so that each benefited parcel is charged an equal amount. The per-parcel cost is estimated to be \$7,550.63. Equal allocation is reasonable because the benefit of access to the improvement is the same for all parcels.

Pursuant to KPB 14.31.080(A)(1), a special assessment district may not be formed if the estimated amount of the assessment to be levied against each parcel in the district exceeds 25 percent for paved improvements. Within this proposed district, there are zero parcels that exceed the 25 percent limitation.

This matter is now presented to the assembly for approval to proceed with the project.

**KENAI PENINSULA BOROUGH ROAD SERVICE AREA  
RESOLUTION 2021-006**

**A RESOLUTION APPROVING THE PETITION REPORT  
AND RECOMMENDING A BOROUGH MATCH FOR THE  
SOUTH BEND BLUFF ESTATES  
ROAD IMPROVEMENT ASSESSMENT DISTRICT**

- WHEREAS,** the road service area (RSA) board authorized funding to obtain an engineer's estimate under KPB 14.31.050(E) for the South Bend Bluff Estates Road Improvement Assessment District (RIAD) at its November 24, 2020, meeting; and
- WHEREAS,** the engineer's estimate is \$691,450.33 for the South Bend Bluff Estates RIAD (includes construction costs of \$598,615, and other costs such as a 10 percent design & engineering cost of \$59,861.50, and a 5 percent contract administrative and construction management cost of \$32,973.83); and
- WHEREAS,** in accordance with KPB 14.31.060(2)(a) a 10 percent project contingency cost of \$69,145.03, and a KPB administration fee of \$9,568.90 have been added to the engineers estimate bringing the total estimated project cost to \$770,164.26; and
- WHEREAS,** per KPB 14.31.050(I), the sponsor has provided the assessing department with written notice of intent to proceed with the project; and
- WHEREAS,** pursuant to KPB 14.31.060, the borough assessor or the assessor's designee, in consultation with RSA staff, has prepared and submitted a special assessment district Petition Report for the RSA board's consideration and approval prior to circulation; and
- WHEREAS,** pursuant to KPB 14.31.050(J), at least 10 days prior to the hearing date of this resolution, the KPB Assessing Department notified the proposed benefited parcel owners by general mail, describing the special assessment district and proposed improvement, providing a map of the proposed improvement, the date of the public hearing, and informing the recipients that the legal description of parcels within the proposed district as of the date the RSA board approves the resolution will be used to determine assessments, and any action to replat parcels within the proposed district must be completed and recorded before the date the RSA board approves the resolution; and
- WHEREAS,** KPB 5.20.170 established a borough match fund program for RIAD projects that upgrade existing roads. Pursuant to KPB 14.31.055(A), the RSA board may authorize up to 50 percent of the costs of a RIAD be defrayed from the borough match fund for any project that upgrades existing roads; and
- WHEREAS,** KPB 14.31.055(B) states a borough match may be considered on RIAD projects for: (1) pavement projects for existing roads which have been certified for borough maintenance, (2) pavement or gravel projects for existing roads, which do not meet borough standards in order that the road will be brought to borough standards, and



(3) pavement or gravel projects for existing substandard gravel roads, which have been certified for borough maintenance in order that the road will be brought to borough standards; and

**WHEREAS,** it is in the best interest of the road service area and borough residents to approve the petition report and recommend a borough match based on 14.31.055(D) criteria for the proposed RIAD and make a recommendation to the borough assembly regarding formation of the district;

**NOW, THEREFORE, BE IT RESOLVED BY THE KENAI PENINSULA BOROUGH ROAD SERVICE AREA BOARD:**

**SECTION 1.** The board approves the Petition Report for the proposed South Bend Bluff Estates RIAD.

**SECTION 2.** The board recommends the assembly form and proceed with the South Bend Bluff Estates RIAD as set forth in the attached Petition Report contingent upon the further requirements of KPB 14.31 being met. There are five (5) exhibits to the Petition Report which are also included. Those exhibits are:

- 1) Petition Information Sheet: provides a description of the proposed improvement, a description of the limitations on withdrawing a petition signature under KPB 14.31.070(E), and provides the name, address and daytime telephone number of the sponsor(s) of the petition;
- 2) Estimated assessment roll: a spreadsheet listing the tax parcel number, legal description, the assessed valuation, the assessment-to-value ratio and any required prepayment of assessment as set forth in KPB 14.31.080(A)(1), maximum assessment, the name of the record owner, and any delinquencies or other special assessments liens of each parcel in the proposed district; additionally, the total estimate cost of the project, an estimate of the amount to be assessed to each parcel, and the total number of parcels to be assessed;
- 3) Map of the proposed RIAD district and boundaries;
- 4) Memorandum from the Finance Director stating the method of financing, interest rate to be paid, and setting forth the number and frequency of payments; and
- 5) Summary of construction cost estimates for the South Bend Bluff Estates RIAD provided by McLane Consulting Inc., prepared August 20, 2021.

**SECTION 3.** The board approves expenditure of up to 50 percent (estimated to be \$385,082.13) from the RIAD Match Fund for the South Bend Bluff Estates RIAD. This RIAD includes the improvement and paving upgrade on that portion of Winridge Avenue (1,030 LF), Winridge Court (550), Wispen Avenue (850), Grant Avenue (1,710) and Southbend Court (665), for approximately 4,805 total lineal feet of roadway.

**SECTION 4.** The project scope of work provides road upgrades and paving to approximately 4,805 linear feet currently on the Road Service Area maintenance list.

**SECTION 5.** The board recommends that the borough proceed with the construction of the road improvement to a district encompassing 51 benefited parcels, as shown in Petition

Report Exhibit 3, the district map, contingent upon the further requirements of KPB Chapter 14.31 being met.

**SECTION 6.** The board makes the following findings required by KPB 14.31.055(D):

1. Standard: Whether it is economically feasible to improve the road to RSA certification standards.  
Finding: The entire project cost is estimated to be \$770,164.26. The project would provide pavement and reduce maintenance costs. The roads are in good condition, with no out of the ordinary costs for construction anticipated. Considering these factors, along with the funds available for RIAD matches, the project is economically feasible.
2. Standard: To what extent do the assessed values of the benefited properties support the scope of work for the project.  
Finding: Pursuant to KPB 14.31.080(A)(1), no lien may exceed 25 percent of the current assessed value of the parcel for pavement improvements. The attached spreadsheet, Petition Report Exhibit 2, shows that if the borough makes a 50 percent match, assessments for each parcel will be \$7,550.63. Parcels range in value from \$28,800 to \$809,500. Liens will exceed 25% of the current assessed value on five (5) parcels within the proposed district. Partial prepayments of assessments (liens) will be required on these parcels. However, the overall assessed values support the project.
3. Standard: The number of applications for projects received that year.  
Finding: This is the only application for projects received prior to the July 1, 2021, deadline.
4. Standard: The funds available in the Road Improvement Assessment District Match Fund.  
Finding: The balance of the RIAD Match Fund is \$963,910, which is sufficient to cover the match costs.
5. Standard: Whether an application for district formation has been previously filed and whether conditions have changed to make the project more feasible than in past application years.  
Finding: No application for district formation has been submitted for these roadways.
6. Standard: The number of residents served.  
Finding: The proposed RIAD serves an estimated 75 residents.
7. Standard: The number of parcels served.  
Finding: There are 51 parcels served.
8. Standard: The feasibility of the project's compliance with KPB 14.31.080(A) criteria regarding restrictions on formation.  
Finding: The project meets all the following feasibility criteria:

1. Does the assessment to assessed value ratio exceed 21 percent for gravel improvements to an existing road, or 25 percent for pavement improvements, or 40 percent for construction of a new road, of the current assessed value of the parcels?

Yes. There are five (5) properties within this RIAD whose assessment to assessed value ratio exceeds the 25 percent for pavement improvements restriction. Prepayments of assessments will be required, totaling \$803.15.

2. Are there parcels bearing more than 10 percent of the estimated costs of the improvement that are subject to unpaid, past-due borough property taxes?

No. Presently there are no parcels within this RIAD which are delinquent in payment of borough real property taxes.

3. Do unimproved parcels represent more than 40 percent of the assessed value within the district?

No. Of the 51 total properties within this residential neighborhood district, there are 10 parcels which are unimproved properties, a ratio of 3.95%.

4. For construction of new roads, does one owner own more than 40 percent of the parcels to be benefited?

N/A.

9. Standard: Whether there is alternate access to properties serviced by the roads and the condition of that alternate access.

Finding: There are no alternate accesses to South Bend Bluff Estates.

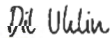
**SECTION 7.** That this resolution takes effect immediately and a copy of this resolution be forwarded to the mayor and assembly.

**ADOPTED BY THE KENAI PENINSULA BOROUGH ROAD SERVICE AREA BOARD  
ON THIS 14TH DAY OF SEPTEMBER, 2021.**



Robert Ruffner, Road Service Area Board Chair

ATTEST:



Dil Uhlir, Roads Service Area Director





## Office of the Borough Clerk

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

Johni Blankenship, MMC  
Borough Clerk

### CERTIFICATION OF PETITION

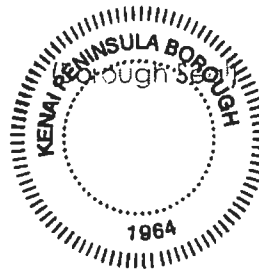
#### South Bend Bluff Estates Road Improvement Assessment District

A petition for formation of the South Bend Bluff Estates Road Improvement Assessment District was received in the Office of the Borough Clerk on November 1, 2021. I hereby certify the petition as sufficient per the requirements set forth in KPB 14.31.070(D). Signatures of owners of record of at least 60% of the total number of parcels subject to the assessment were required as well as at least 60% in value of the property to be benefited. Signatures of property owners of 40 parcels (78.43%) were validated representing 84.15% of the assessed value of the property being benefited.

A Check in the amount of \$8,200.00 was received by the Special Assessment Coordinator on December 2, 2020 as required by KPB 14.31.050(G).

Dated this 1st day of November, 2021.

Johni Blankenship, MMC  
Borough Clerk



cc: Justin Baldwin (Justin\_L\_Baldwin@yahoo.com) (RIAD Sponsor)  
Marie Payfer, KPB Special Assessment Coordinator  
KPB Assembly President Johnson and Members of the Assembly  
KPB Mayor Charlie Pierce

# Kenai Peninsula Borough

## Assessing Department

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### MEMORANDUM

TO: Robert Ruffner, Road Service Area Board Chairman  
Members, Kenai Peninsula Borough Road Service Area Board

FROM: Dil Uhlin, Road Service Area Director  
Marie Payfer, Special Assessment Coordinator *MP*

DATE: November 24, 2020

RE: South Bend Bluff Estates RIAD Engineer's Estimate RSA Staff Report

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In accordance with KPB 14.31.050(D), the following staff report is provided to the road service area (RSA) board for its consideration in evaluating the application for petition and determining whether the engineer's estimates for the following road improvement assessment district (RIAD) project should be funded through the Engineer's Estimate Fund established under KPB 5.20.160. Applications must be received by July 1 of each year (KPB 14.31.040), and petitions must be reviewed by September 1 of each year for construction in the following year (KPB 14.31.050(E)). The original application for the South Bend Bluff Estates RIAD was received on September 24, 2020, and a revised application was received on October 14, 2020, see Attachment #1. This project will be scheduled for year of construction in 2022.

The following is an analysis of the criteria the board must consider when it determines whether to appropriate money from the fund:

#### SECTION 1. APPLICATION:

SPONSOR: Justin Baldwin

SUBJECT ROADS: Located within the RSA West Region, Unit 7, the proposed district would include the west portion of Winridge Avenue at 1,100 linear feet (LF), Grant Avenue at 1,720 LF, Winridge Court at 550 LF, Southbend Court at 673 LF, and Wispen Avenue at 820 LF, for a total road length of approximately 4,863 LF. All roads are currently certified for road maintenance. The proposed project would benefit fifty-one (51) residential properties. See Attachment #2, District Map.

SCOPE: The application requests that the subject roads be improved and paved.

#### SECTION 2. KPB 14.31.080(A)(3) & (4) RESTRICTIONS ON FORMATION:

Pursuant to KPB 14.31.050(D), staff must prepare an initial report for the RSA board to consider for approval of an order for the engineer's estimate regarding the proposed project, based on the proposed boundaries (see attached map) and a review of 14.31.080(A)(3) and (4) restrictions on formation for the proposed project.

14.31.080(A)(3) *Do unimproved parcels represent more than 40 percent of the assessed value within the district?*

No. There are ten (10) unimproved parcels in this proposed district, representing 19.61% of the district properties. Forty-one (41) parcels within this district are improved residential properties, for a total of fifty-one (51) parcels.

14.31.080(A)(4) *If this project is for construction of new roads, does one owner own more than 40% of the parcels to be benefited?*

This project is not for construction for new roads.

### **SECTION 3. KPB 14.31.050(E) RSA BOARD CRITERIA:**

Pursuant to KPB 14.31.050(E), the RSA board shall consider the following factors in evaluating petition applications and determining whether to approve an order for an engineer's estimate:

1. *Whether the roads are currently on the maintenance system.*  
All roadways within this proposed project are on the KPB maintenance system. The proposed project is to improve and pave the road and bring the road up to Borough road standards.
2. *The number of petitions for projects received that year.*  
This is the first petition (application) for projects received for the 2020 calendar year, however, the application was received after the July 1 deadline to meet construction for 2021. If approved, this project would be constructed in 2022.
3. *The funds available in the RIAD Engineer's Estimate Fund established under KPB 5.20.160.*  
It is estimated that the RIAD application fee of \$8,200 will cover the engineers estimate. The current balance in the RSA's Engineer's Estimate Fund is \$12,000.
4. *Whether an application for district formation has been previously filed and whether conditions have changed that make the project more feasible than in past application years.*  
This project has not been subject to a previous application for a special assessment district formation.

### **ADDITIONAL COMMENTS:**

The sponsor has visited with the owners of several benefited parcels included in the proposed district and believes he will be able to obtain the required signature thresholds for support of the project.

Pursuant to KPB 14.31.040, the application must be received no later than July 1 of each year, and reviewed by the RSA Board prior to September 1, for consideration for construction for the following calendar year. As this application was received after July 1, 2020, the year of construction would be for calendar year 2022.

Parcel 055-423-21: The intersection at Grant Avenue and Southbend Court is included in the district boundaries for paving. Paving this intersection will include the driveway entrance to 47428 Grant Avenue. This parcel has been included in the district as a benefited parcel. See Attachment #3 & #4.

Parcel 055-423-22: It has been determined that this property will not benefit directly from the proposed improvement and is therefore not included in the district. The property located at 47488 Augusta National Road, is currently being served directly by Augusta National Road. The improvement will end prior to contact with this parcel's northwest corner boundary. See Attachment #4.



**RECOMMENDATION:**

South Bend Bluff Estates RIAD appears to be viable based on the substantial support for the project. Code requirements have been satisfied in regards to unimproved parcel ratio and ownership restriction percentages. The assessed value of the parcels appears sufficient to support the maximum assessment lien the equivalent of which is 25 percent of a parcel's value for paving projects, but that cannot be confirmed until a preliminary cost estimate is obtained. As of this date, zero parcels are delinquent in real property taxes. Therefore, it is recommended that the RSA board approve to order an engineer's estimate for this proposed project.

Your consideration is appreciated.

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**PETITION REPORT**  
**SOUTH BEND BLUFF ESTATES**  
**ROAD IMPROVEMENT ASSESSMENT DISTRICT (RIAD)**

In accordance to KPB Code Chapter 14.31, this petition proposes a road improvement assessment district (RIAD) be formed in the area of Kalifornsky, for the purpose of improving and paving a total road length of 4,805 linear feet (LF) of the subject roads of South Bend Bluff Estates. A map showing the parcels to be assessed is attached to the Petition Report as Exhibit 3. The project would benefit 51 parcels.

**Project proposal:** This RIAD includes the improvement and paving upgrade on that portion of Winridge Avenue (1,030 LF), Winridge Court (550), Wispen Avenue (850), Grant Avenue (1,710) and Southbend Court (665), for approximately 4,805 total lineal feet of roadway. The engineer's estimate for the total cost of construction is \$691,450.33, which includes the 2022 estimated construction cost of \$598,615, a 10 percent design and development cost of \$59,861.50, and a 5 percent contract administration and construction management cost of \$32,973.83. Added to the engineer's estimate is a 10 percent project contingency cost of \$69,145.03 (in accordance with KPB 14.31.060(2)(a)), and a KPB Administration Fee cost of \$9,568.90. **The total estimated project cost is \$770,164.26.** Accordingly, after accounting for a maximum RSA Match of 50% (*if approved, and contingent on the availability of funds*), the total estimated project cost for the **benefited parcels is \$385,082.13.** The proposed method of cost allocation is by equal assessment to each of the 51 benefited parcels. **The allocated cost per parcel is estimated at \$7,550.63.** See Exhibit 2 of the Petition Report, estimate assessment roll, for project cost calculation.

**This Petition Report is supported by the attached exhibits:**

- 1) Petition Information Sheet: provides a description of the proposed improvement, a description of the limitations on withdrawing a petition signature under KPB 14.31.070(E), and provides the name, address and daytime telephone number of the sponsor(s) of the petition;
- 2) Estimate assessment roll: a spreadsheet listing the tax parcel number, legal description, the assessed valuation, the assessment-to-value ratio and any required prepayment of assessment as set forth in KPB 14.31.080(A)(1), maximum assessment, the name of the record owner, and any delinquencies or other special assessment liens of each parcel in the proposed district, the total estimate cost of the project, an estimate of the amount to be assessed to each parcel, and the total number of parcels to be assessed; and
- 3) Map of the proposed RIAD district and boundaries;
- 4) Memorandum from the Finance Director stating the method of financing, interest rate to be paid, and setting forth the number and frequency of payments.
- 5) Summary of construction cost estimates for the South Bend Bluff Estates RIAD provided by McLane Consulting, Inc., prepared August 20, 2021.

**RIAD sponsor(s):**

BALDWIN, JUSTIN	47677 GRANT AVE, KENAI AK 99611	(907) 398-7624	Justin_L_Baldwin@yahoo.com
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**ROAD IMPROVEMENT ASSESSMENT DISTRICT (RIAD)  
PETITION INFORMATION SHEET  
SOUTH BEND BLUFF ESTATES RIAD**

In accordance to KPB Code Chapter 14.31, this petition proposes a road improvement assessment district (RIAD) be formed in the area of Kalifornsky, for the purpose of improving and paving a total road length of 4,805 linear feet (LF) of the subject roads of South Bend Bluff Estates. A map showing the parcels to be assessed is attached to the Petition Report (PR) as PR Exhibit 3. The project would benefit 51 parcels.

**Project proposal:** This RIAD includes the improvement and paving upgrade on that portion of Winridge Avenue (1,030 LF), Winridge Court (550), Wispen Avenue (850), Grant Avenue (1,710) and Southbend Court (665), for approximately 4,805 total lineal feet of roadway. The engineer's estimate for the total cost of construction is \$691,450.33, which includes the 2022 estimated construction cost of \$598,615, a 10 percent design and development cost of \$59,861.50, and a 5 percent contract administration and construction management cost of \$32,973.83. Added to the engineer's estimate is a 10 percent project contingency cost of \$69,145.03 (*in accordance with KPB 14.31.060(2)(a)*), and a KPB Administration Fee cost of \$9,568.90. **The total estimated project cost is \$770,164.26.** Accordingly, after accounting for a maximum RSA Match of 50% (*if approved, and contingent on the availability of funds*), the total estimated project cost for the **benefited parcels is \$385,082.13.** The proposed method of cost allocation is by equal assessment to each of the 51 benefited parcels. **The allocated cost per parcel is estimated at \$7,550.63.** See PR Exhibit 2, estimate assessment roll, for project cost calculation.

Additionally, with regard to each benefited parcel, PR Exhibit 2 (the estimate assessment roll) contains the tax parcel number, name of record owner, legal description, assessed value, estimated amount of special assessment, the existence of other special assessment liens (if any), and any violations of the assessment to value ratio per KPB 14.31.080(A).

**The sponsor of this RIAD petition is:**

BALDWIN, JUSTIN	47677 GRANT AVE, KENAI AK 99611	(907) 398-7624	Justin_L_Baldwin@yahoo.com
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**What costs are covered:** The estimated assessment will only cover the cost to improve and pave the public right-of-way of the above-mentioned roadways, not the private driveways to individual benefited parcels. For private existing driveways, the engineer's report and design includes: (a) for gravel/dirt driveways, a 2' apron from the road shoulder; and (b), for existing paved driveways, a paved uniform transition from the road shoulder to the standard transition match point, or edge of right-of-way.

**Assessment lien and lien restrictions:** The cost will be assessed in the form of a recorded lien on the benefited parcel. The lien will remain on the property until the assessment has been paid in full. In no case may a property be assessed (liened) an amount in excess of 25% of the current assessed value of the property for a paving improvement. For the purpose of this restriction, the estimated amount of the special assessment against a parcel will be reduced by the amount of a partial *prepayment* of the assessment, to reduce the assessment (lien amount) to less than or equal to 25% of the property's assessed value.

Within this district, there are five (5) parcels which are affected by the assessment to value lien limit restriction. See PR Exhibit 2, Estimate Assessment Roll, for those parcels affected by this restriction, under column headed "Required Prepays".

**Payment options:** The cost assessed can be paid in full, or in 10 annual installments with interest to accrue on the unpaid amount of the assessment. The assessment may be paid at any time prior to the 10 year period without penalty. Interest will be added to any assessments not paid within 30 days of the date of mailing the Notice of Assessment (occurs after construction). The interest rate charged is the ***\*prime rate plus 2% (\*as of the date the ordinance confirming the assessment roll is enacted by the assembly)***, and is fixed for the life of the loan. The penalty for delinquent installment and assessment payments is the same as the penalty for delinquent real property taxes in effect on the date of the delinquency. The lien will remain on the parcel until the debt has been paid in full.

**Legal description of parcels:** The legal description of the parcels subject to the special assessment within the proposed RIAD was established as of the date of the RSA resolution to approve the petition report and recommend a borough match. **The RSA Board approved RSA Resolution 2021-xx on September 14, 2021.** Any action to replat parcels within the proposed RIAD must have been completed and recorded before the date the RSA board approved the resolution. No further subdivision, reversion of acreage, or lot line adjustment will be recognized for RIAD assessment purposes after the RSA board issues the resolution.

**Important information regarding subdividing benefited properties:** pursuant to KPB 14.31.080(B), if a property owner seeks to subdivide a benefited parcel after the date of the RSA resolution or after costs are assessed, the property owner will be required to pay off the remaining balance of the assessment – or prepay estimated costs if the final assessment has not been determined – prior to approval of the final plat pursuant to KPB 20.60.030. Refunds of prepayments of assessments for plat approvals may apply: (a) if the RIAD petition or project should fail for any reason; (b) if the final plat is not approved pursuant to KPB 20.60.030 and the subdividing property request a refund within 30-days of the final assessment; or, (c) for any amount in excess of the prepaid estimated cost over the final assessment. The subdividing property owner will be responsible for payment if the estimate costs are less than the final assessment due within 30-days of the final assessment approval. See the KPB Finance Department for additional information.

**Deferral of Payment of Principle (only):** A deferment (e.g., postponement or delay) of payment of principle only, may be available to a qualifying owner of a benefited property. Some qualification are: • the property must be owned and occupied as the primary residence of the application; • the owner must be economically disadvantaged; and • interest will accrue and must be paid annually. Applications and annual renewals (to verify qualifying conditions continue to exist) must be submitted to the Finance Department by February 1. See the Finance Department for all restrictions and requirements for the deferment of principle option.

**Petition signature thresholds:** This petition proposes to assess all of the benefited parcels equally. In order to qualify, the petition must have the signatures of the owners of record of (a) at least 60% of the total number of parcels subject to assessment within the proposed RIAD, *and* (b) at least 60% in value of the property to be benefited. **Approval of the project is signified by properly signing and dating the Petition Signature Page.** Failure to secure enough signatures to meet these thresholds will cause the petition to fail.



**Petition signature requirements:** An owner's signature represents a **VOTE IN FAVOR** of the project. All signatures must be made in ink, dated properly, and the completed Petition Signature Page must be returned to the RIAD sponsor in a timely manner to meet the petition deadline. For parcels with joint ownership *each owner of record must sign and date the petition*. If a joint owner is deceased a copy of the death certificate must be provided. Refer to page 2 of the **Petition Signature Page** (included) for additional instructions.

**Signature withdrawal, KPB 14.31.070(E):** A signature on a petition may be withdrawn only by written notice from the signer submitted to the assessing department *prior* to the final filing of the completed petition signature pages by the sponsor. *A withdrawal is effective only if written notice of the withdrawal is submitted before the filing of the completed petition to the assessing department.* This restriction does not preclude the property owners from filing an objection as to the necessity of formation of the district as provided in KPB 14.31.090(D).

**Deadline for signatures:** The sponsor will be responsible to file the completed petition (signed & dated *Petition Signature Pages*) to the assessing department within *45 days of the date on which the assessing department distributes the final petition to the sponsor* for distribution to all property owners. Benefited property owners should **contact the RIAD sponsor(s)** with any questions regarding the **petition deadline**.

**Certification of petition:** Once the sponsor files the completed petition with the assessing department, the borough clerk shall determine whether the petition contains sufficient signatures as required. If the petition meets the required signature thresholds, the borough clerk shall certify the petition and submit the petition to the mayor for preparation of a resolution to form the district and proceed with the improvement.

**ONLY the *Petition Signature Page* needs to be returned to the RIAD sponsor(s):**

BALDWIN, JUSTIN	47677 GRANT AVE, KENAI AK 99611	(907) 398-7624	Justin_L_Baldwin@yahoo.com
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For additional information, contact:

**Marie Payfer**, KPB Special Assessment Coordinator

Direct: 907-714-2250 or Email: [mpayfer@kpb.us](mailto:mpayfer@kpb.us)

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# SOUTH BEND BLUFF ESTATES RIAD - ESTIMATE ASSESSMENT ROLL

Resolution to Form the District and Proceed with the Improvement  
Ordinance of Appropriation

RIAD FILING FEE: \$8,200  
Received on December 2, 2020

PROJECT COSTS	ESTIMATE COST
Gravel Construction Cost:	598,615.00
Construction Contingency (5%):	32,973.83
Construction Cost Subtotal:	631,588.83
Engineering Design (10%):	59,861.50
Total Construction Cost:	691,450.33
RIAD Project Contingency (10%):	69,145.03
Filing Fee Adjustment:	0.00
KPB Administration Cost:	9,568.90
Total Project Cost:	770,164.26
Less Road Service Area Match (50%):	385,082.13
Final Cost to Parcel Owners:	385,082.13
Number of Benefited Parcels:	51
Cost Per Parcel:	7,550.63

Total Assessed Value: 2021 Assessed Values  
Lien limit per parcel: Cannot exceed 25% of Assessed Value, per 14.31.080(A)(1)

Total Estimated Project Cost: 385,082.13  
Less any required pre-payment: (803.15) Paid 12/13/2021  
Total Estimated Assessments: 384,278.98

Total number of parcels in district: 51  
Total number parcels in Favor: 40  
Percentage of parcels in Favor: 78.43% ≥ 60% 14.31.070(D)(a)  
Percentage of parcels in Favor, 2021 AV: 84.15% ≥ 60% 14.31.070(D)(b)  
Percentage of parcels w/Delinquent RP Taxes: 2% <10% per 14.31.080(2)  
Unimproved parcels AV / District AV: 3.95% <40% per 14.31.080(3)

PARCEL ID	LEGAL	2021 ASSESSED VALUE	MAXIMUM ASSESSMENT	REQUIRED PREPAYS	PREPAYMENTS AMOUNTS	Ck# / Date	OWNER	ADDRESS	CITY ST ZIP	VOTED IN FAVOR	A.V. OF VOTES IN FAVOR	TAX DELINQ	OTHER SPC ASSMT
055-421-13	T 5 N R 11 W SEC 14 SEWARD MERIDIAN KN 0850122 WINRIDGE ESTATES SUB PART 1 LOT 1 BLK 11	187,300	7,550.63	0.00			MICCHICHE PETER ANDREW	PO BOX 1544	SOLDOTNA, AK 99669	YES	187,300	NO	NO
055-421-14	T 5 N R 11 W SEC 14 SEWARD MERIDIAN KN 0850122 WINRIDGE ESTATES SUB PART 1 LOT 2 BLK 11	585,100	7,550.63	0.00			PITSILIONIS JOANNA	PO BOX 151	KENAI, AK 99611	YES	585,100	NO	NO
055-421-33	T 5 N R 11 W SEC 14 & 23 SEWARD MERIDIAN KN 0850122 WINRIDGE ESTATES SUB PART 1 LOT 1 BLK 6	532,700	7,550.63	0.00			SMITH CARI & ANDREW	47457 WINRIDGE AVE	KENAI, AK 99611	YES	532,700	NO	NO
055-421-36	T 5 N R 11 W SEC 23 SEWARD MERIDIAN KN 0850122 WINRIDGE ESTATES SUB PART 1 LOT 4 BLK 6	306,600	7,550.63	0.00			MENAPACE ROENA F	47410 AUGUSTA NATIONAL RD	KENAI, AK 99611	YES	306,600	NO	NO
055-421-37	T 5 N R 11 W SEC 23 SEWARD MERIDIAN KN 0850122 WINRIDGE ESTATES SUB PART 1 LOT 5 BLK 6	466,300	7,550.63	0.00			NAYLOR MARRIE A & BOBBY B	47468 WISPEN AVE	KENAI, AK 99611	YES	466,300	NO	NO
055-421-38	T 5 N R 11 W SEC 23 SEWARD MERIDIAN KN 0850122 WINRIDGE ESTATES SUB PART 1 LOT 6 BLK 6	281,500	7,550.63	0.00			SMITH PUSSADEE & DAVID P	47485 WINRIDGE AVE	KENAI, AK 99611	YES	281,500	NO	NO
055-421-39	T 5 N R 11 W SEC 23 SEWARD MERIDIAN KN 0850122 WINRIDGE ESTATES SUB PART 1 LOT 6 BLK 5	319,600	7,550.63	0.00			COLEMAN LACEY D & KYLE A	PO BOX 2	SOLDOTNA, AK 99669	YES	319,600	NO	NO
055-421-44	T 5 N R 11 W SEC 23 SEWARD MERIDIAN KN 0850122 WINRIDGE ESTATES SUB PART 1 LOT 1 BLK 5	28,800	7,200.00	350.63	350.63	266749 12/13/2021	MILLER TERA N & JARED J	PO BOX 404	SANTAQUIN, UT 84655		0	NO	NO
055-423-01	T 5 N R 11 W SEC 14 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 1 BLK 1	585,400	7,550.63	0.00			SMITH KEVIN R & TERESA M	47726 GRANT AVE	KENAI, AK 99611	YES	585,400	NO	NO
055-423-02	T 5 N R 11 W SEC 14 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 2 BLK 1	606,700	7,550.63	0.00			DUNAWAY ELONA & KYLE	57686 GRANT AVE	KENAI, AK 99611	YES	606,700	NO	NO
055-423-03	T 5 N R 11 W SEC 14 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 3 BLK 1	135,100	7,550.63	0.00			GABRIEL TERRRYA & JOSEPH	36796 DOWN CIR	KENAI, AK 99611	YES	135,100	NO	NO
055-423-04	T 5 N R 11 W SEC 14 & 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 4 BLK 1	492,900	7,550.63	0.00			OMAN RONALD P & MARY TRUST	PO BOX 75	KENAI, AK 99611	YES	492,900	NO	NO
055-423-05	T 5 N R 11 W SEC 14 & 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 5 BLK 1	579,300	7,550.63	0.00			WILSON, GREGORY C	19110 WAR ADMIRAL RD	EAGLE RIVER, AK 99577	YES	579,300	NO	NO
055-423-06	T 5 N R 11 W SEC 14 & 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 6 BLK 1	138,500	7,550.63	0.00			CUNNINGHAM DENA R & SCOTT M	37100 EDGEWOOD DR	KENAI, AK 99611	YES	138,500	NO	NO
055-423-07	T 5 N R 11 W SEC 14 & 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 7 BLK 1	133,400	7,550.63	0.00			CUNNINGHAM DENA R & SCOTT M	37100 EDGEWOOD DR	KENAI, AK 99611	YES	133,400	NO	NO

Estimate Assessment Roll

South Bend Bluff Est RIAD

KPB Assessing Dept. (Page 1 of 4)

EXHIBIT 4

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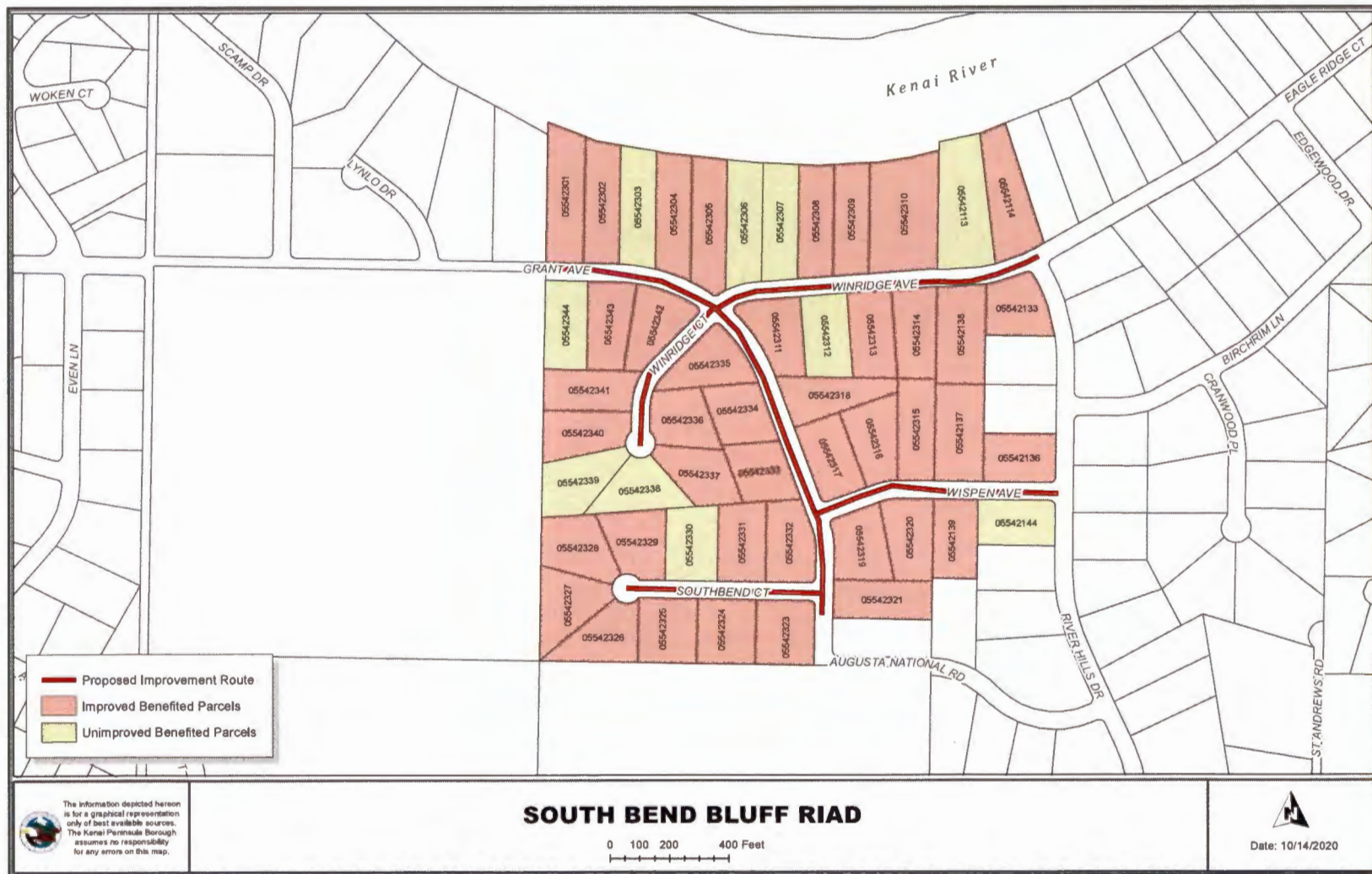


PARCEL ID	LEGAL	2021 ASSESSED VALUE	MAXIMUM ASSESSMENT	REQUIRED PREPAYS	PREPAYMENTS AMOUNTS	Clk/Date	OWNER	ADDRESS	CITY ST ZIP	VOTED IN FAVOR	A.V. OF VOTES IN FAVOR	TAX DELINQ	OTHER SPC ASSMT
055-423-08	T 5N R 11W SEC 14 & 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 8 BLK 1	527,500	7,550.63	0.00			CARTER SUE C	PO BOX 212	KENAI, AK 99611	YES	527,500	NO	NO
055-423-09	T 5N R 11W SEC 14 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 9 BLK 1	551,500	7,550.63	0.00			MARTIN KAREN M & DAVID R	PO BOX 468	CLAM GULCH, AK 99568	YES	551,500	NO	NO
055-423-10	T 5N R 11W SEC 14 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 10 BLK 1	255,500	7,550.63	0.00			O'GUINN SHELLEY L & GEORGE C	PO BOX 1501	SOLDOTNA, AK 99669		0	NO	NO
055-423-11	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 1 BLK 2	524,100	7,550.63	0.00			MARTIN, JANELLE MCKEOWN, SEAN PERRY	44482 FRONTIER AVE	SOLDOTNA, AK 99669	YES	524,100	NO	NO
055-423-12	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 2 BLK 2	30,000	7,500.00	50.63	50.63	266749 12/13/2021	O'GUINN SHELLEY & GEORGE	PO BOX 1501	SOLDOTNA, AK 99669		0	NO	NO
055-423-13	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 3 BLK 2	809,500	7,550.63	0.00			O'GUINN SHELLEY & GEORGE	PO BOX 1501	SOLDOTNA, AK 99669		0	NO	NO
055-423-14	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 4 BLK 2	371,100	7,550.63	0.00			O'GUINN GEORGE	PO BOX 1501	SOLDOTNA, AK 99669		0	NO	NO
055-423-15	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 5 BLK 2	413,500	7,550.63	0.00			ZIBELL NIKKI J & DARREN D	47488 WISPEN AVE	KENAI, AK 99611	YES	413,500	NO	NO
055-423-16	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 6 BLK 2	715,800	7,550.63	0.00			O'GUINN LISA M & ERIC C	47498 WISPEN AVE	KENAI, AK 99611	YES	715,800	NO	NO
055-423-17	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 7 BLK 2	425,800	7,550.63	0.00			WOOD JENNIFER & WILLIAM	47468 GRANT AVE	KENAI, AK 99611	YES	425,800	NO	NO
055-423-18	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 8 BLK 2	518,700	7,550.63	0.00			GODSEY SARAH & MILES ALEKSANDR	PO BOX 2128	SOLDOTNA, AK 99669		0	NO	NO
055-423-19	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 1 BLK 3	444,600	7,550.63	0.00			RANEY TONYA S & STEPHEN E	47448 GRANT AVE	KENAI, AK 99611	YES	444,600	NO	NO
055-423-20	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 2 BLK 3	508,800	7,550.63	0.00			DODGE MARY K & DONALD J	4910 WOODRIDGE CIR	ANCHORAGE, AK 99516	YES	508,800	NO	NO
055-423-21	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 3 BLK 3	332,000	7,550.63	0.00			BRIGGS DUSTIN J SANDNESS SKYLA R	47428 GRANT AVE	KENAI, AK 99611	YES	332,000	NO	NO
055-423-23	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 22 BLK 4	342,200	7,550.63	0.00			O'GUINN SHELLEY L & GEORGE C	PO BOX 1501	SOLDOTNA, AK 99669		0	NO	NO
055-423-24	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 21 BLK 4	342,200	7,550.63	0.00			O'GUINN SHELLEY L & GEORGE C	PO BOX 1501	SOLDOTNA, AK 99669		0	NO	NO
055-423-25	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 20 BLK 4	338,800	7,550.63	0.00			O'GUINN SHELLEY & GEORGE	PO BOX 1501	SOLDOTNA, AK 99669		0	NO	NO
055-423-26	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 19 BLK 4	419,400	7,550.63	0.00			CRAWFORD LORRAINE F & WARREN D JR	47569 SOUTHEND CT	KENAI, AK 99611	YES	419,400	NO	NO
055-423-27	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 18 BLK 4	439,800	7,550.63	0.00			ENGSTROM NICOLE & DANIEL	47589 SOUTHEND CT	KENAI, AK 99611	YES	439,800	NO	NO
055-423-28	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 17 BLK 4	307,800	7,550.63	0.00			WALSH CAROL M & CLINTON R	47578 SOUTHEND CT	KENAI, AK 99611	YES	307,800	NO	NO
055-423-29	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 16 BLK 4	560,700	7,550.63	0.00			VILLEGAS JANICE M & ANDEW	47558 SOUTHEND CT	KENAI, AK 99611	YES	560,700	NO	NO
055-423-30	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 15 BLK 4	30,000	7,500.00	50.63	50.63	266749 12/13/2021	CHRISTOPHER GRANT T	PO BOX 3633	SOLDOTNA, AK 99669		0	NO	NO

PARCEL ID	LEGAL	2021 ASSESSED VALUE	MAXIMUM ASSESSMENT	REQUIRED PREPAYS	PREPAYMENTS AMOUNTS	Chk#/Date	OWNER	ADDRESS	CITY ST ZIP	VOTED IN FAVOR	A.V. OF VOTES IN FAVOR	TAX DELINQ	OTHER SPC ASSMT
055-423-31	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 14 BLK 4	334,300	7,550.63	0.00			GOFORTH DONALD L	47518 SOUTHBEND CT	KENAI, AK 99611	YES	334,300	NO	NO
055-423-32	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 13 BLK 4	467,100	7,550.63	0.00			HUNTER ROBERT L	47445 GRANT AVE	KENAI, AK 99611	YES	467,100	NO	NO
055-423-33	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 12 BLK 4	519,200	7,550.63	0.00			MCKINLEY CAITLIN E & MARK R	47465 GRANT AVE	KENAI, AK 99611	YES	519,200	NO	NO
055-423-34	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 11 BLK 4	387,000	7,550.63	0.00			ROLPH LISA M & ZACHARY M	47485 GRANT AVE	KENAI, AK 99611	YES	387,000	NO	NO
055-423-35	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 10 BLK 4	518,500	7,550.63	0.00			WEBER MICHAEL R & APRIL D	47589 WINRIDGE CT	KENAI, AK 99611	YES	518,500	NO	NO
055-423-36	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 9 BLK 4	429,600	7,550.63	0.00			TITUS CARRIE S & CHRISTOPHER J	47619 WINRIDGE CT	KENAI, AK 99611	YES	429,600	NO	NO
055-423-37	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 8 BLK 4	416,000	7,550.63	0.00			HUNTLEY ARNOLD L	47649 WINRIDGE CT	KENAI, AK 99611	YES	416,000	NO	NO
055-423-38	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 7 BLK 4	29,200	7,300.00	250.63	250.63	266749 12/13/2021	VILLEGAS JANICE & ANDREW	47558 SOUTHBEND CT	KENAI, AK 99611	YES	29,200	YES	NO
055-423-39	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 6 BLK 4	30,700	7,550.63	0.00			CHRISTOPHER GRANT T	PO BOX 3633	SOLDOTNA, AK 99669		0	NO	NO
055-423-40	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 5 BLK 4	490,500	7,550.63	0.00			BERG MERCEDES & TIMOTHY R II	47628 WINRIDGE CT	KENAI, AK 99611	YES	490,500	NO	NO
055-423-41	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 4 BLK 4	424,800	7,550.63	0.00			SCHNEIDERS JAMES CL	47608 WINRIDGE CT	KENAI, AK 99611	YES	424,800	NO	NO
055-423-42	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 3 BLK 4	441,300	7,550.63	0.00			TRUJILLO RAMONA Z & JOSEPH L	47588 WINRIDGE AVE	KENAI, AK 99611	YES	441,300	NO	NO
055-423-43	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 2 BLK 4	433,600	7,550.63	0.00			BALDWIN CHRISTA M & JUSTIN L	47677 GRANT AVE	KENAI, AK 99611	YES	433,600	NO	NO
055-423-44	T 5N R 11W SEC 23 SEWARD MERIDIAN KN 2002042 SOUTH BEND BLUFF ESTATES LOT 1 BLK 4	29,800	7,450.00	100.63	100.63	266749 12/13/2021	BALDWIN CHRISTA M & JUSTIN L	47677 GRANT AVE	KENAI, AK 99611	YES	29,800	NO	NO
51		19,540,100	384,278.98	803.15	803.15	Paid in Full	as of 12/9/2021			40	16,442,600	1	
# Parcels		5 # of Prepayments required											

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Kenai Peninsula Borough  
Finance Department

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**MEMORANDUM**

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

**THRU:** Charlie Pierce,  
Kenai Peninsula Borough Mayor

**FROM:** Brandi Harbaugh, Finance Director

**DATE:** 8/26/2021

**RE:** South Bend Bluff Estates Road Utility Special Assessment District (RIAD)  
Financing

The Borough plans to provide the funds necessary to finance the South Bend Bluff Estates RIAD from internal sources. KPB 5.10.040 allows the investment of borough monies in special assessment districts that are authorized under KPB 14.31. The total of such investments is limited to not more than \$5,000,000 at the end of any fiscal year. As of August 26, 2021, the borough has \$942,142 invested in special assessment districts. If approved, the \$770,165 projected for the South Bend Bluff Estates RIAD, (RIAD), will increase the total special assessment district investment to approximately \$1,712,307.

The owners of property located within the RIAD will be required to make principal and interest payments each year for a ten-year period to retire the indebtedness to the borough. The rate of interest will be equal to the prime rate (currently 3.25%) plus 2% or 5.25%. Property owners can avoid or reduce the interest charge by making accelerated payments on the principal. Penalties will not be imposed for accelerated payments. The assessment constitutes a lien on each parcel within the district.



**Kenai Peninsula Borough**  
 Currently Proposed USAD/RIAD Projects  
 8/26/2021

		Current Proposal	Outstanding Proposals
<b>Max Allowed</b>		<b>\$ 5,000,000</b>	<b>\$ 5,000,000</b>
<b>Current Balance(100.10706) as of:</b>			
	8/26/2021	942,142	942,142
<b>Previously Approved Projects:</b>			
None		-	-
<b>Projects Awaiting Approval:</b>			
South Bend Bluff Estates RIAD		770,165	770,165
<b>Total</b>		<b>\$ 1,712,307</b>	<b>\$ 1,712,307</b>

## 7.0 COST ESTIMATING

### 7.1 Construction Cost

Itemized construction costs are provided in standard ADOT format. Unit prices are based work completed in south central Alaska during the 2020 & 2021 construction seasons.

### 7.2 Cost Adjustments

This report includes a minimal inflation factor, as well as a recommended contingency factor. The inflation factor is applied to the individual unit prices. The contingency factor is applied to the total estimated cost, not individual unit prices.

### 7.3 Utility Conflicts

This report details few utility conflicts as utility locates were limited to test hole locations. Several minor utility conflicts should be expected as described in section 3.5. There may be several effective measures for dealing with the potential conflicts from actual relocation of lowering to design modifications. For the purpose of this estimate utility relocations costs have been excluded.

## 8.0 ENGINEER'S ESTIMATED COST

Description	Cost
RIAD Subtotal: Estimated Construction Cost	\$598,615.00
KPB Subtotal: Estimated Design, Inspection & Project Administration, 10% of Estimated Construction Cost	\$59,861.50
Project Subtotal:	\$658,476.50
Contingency, 5%:	\$32,973.83
<b>TOTAL ESTIMATED CONSTRUCTION COST</b>	<b>\$691,400.33</b>

Attach:            RIAD Map  
                      Unit Cost Schedule  
                      Typical Sections  
                      Soil Analysis, Test Hole Logs & Map

*mp* - Total Est. Cost: \$691,450.33

<b>Winridge Avenue, Winridge Court, Wispen Avenue, Grant Avenue, Southbend Court</b>
<b>2021 RIAD PROGRAM</b>

**ENGINEER'S ESTIMATED CONSTRUCTION COST - 8/20/2021**

Pay Item No.	Pay Item Description	Pay Unit	Quantity	Unit Bid Price	Amount Bid
<b>RIAD BASIC BID</b>					
110(1)	Existing Utilities in Construction Zone	Lump Sum	All Required	(LUMP SUM)	\$ 4,500.00
202(4)	Remove Culvert Pipe	Linear Foot	560	\$ 12.50	\$ 7,000.00
203(9A)	Roadbed Widening, 24' Wide	Station	25.90	\$ 1,850.00	\$ 47,915.00
203(9B)	Roadbed Widening, Cul-De-Sac	Each	2	\$ 3,800.00	\$ 7,600.00
203(10)	Embankment Construction, 24' Wide	Station	3.5	\$ 7,800.00	\$ 27,300.00
203(13)	Turnaround Construction - Grant Avenue	Each	1	\$ 6,500.00	\$ 6,500.00
301(1)	Aggregate Base Course, Grading D-1	Ton	1625	\$ 32.00	\$ 52,000.00
302(2A)	Subgrade Modification, 24' Wide, 6" Depth	Station	6.5	\$ 950.00	\$ 6,175.00
303(1)	Reconditioning	Station	38.05	\$ 500.00	\$ 19,025.00
401(1)	Asphalt Concrete, Type II, Class B	Ton	1480	\$ 130.00	\$ 192,400.00
603(1-15)	15 Inch Corrugated Steel Pipe	Linear Foot	990	\$ 55.00	\$ 54,450.00
605(1)	Drainage Gallery	Linear Foot	600	\$ 20.00	\$ 12,000.00
615(2)	Remove and Relocate Existing Sign	Each	8	\$ 250.00	\$ 2,000.00
618(1)	Seeding (Hydraulic Method)	Lump Sum	All Required	(LUMP SUM)	\$ 5,500.00
639(1)	Gravel Residence Driveway Transition	Each	26	\$ 500.00	\$ 13,000.00
639(4)	Paved Driveway Apron	Each	51	\$ 750.00	\$ 38,250.00
639(5A)	Paved Driveway	Each	25	\$ 2,000.00	\$ 50,000.00
640(1)	Mobilization And Demobilization	Lump Sum	All Required	(LUMP SUM)	\$ 15,000.00
641(1)	Erosion and Pollution Control Administration	Lump Sum	All Required	(LUMP SUM)	\$ 4,500.00
641(2)	Temporary Erosion and Pollution Control	Contingent Sum	All Required	(CONTINGENT SUM)	\$ 2,500.00
643(2)	Traffic Maintenance	Lump Sum	All Required	(LUMP SUM)	\$ 5,000.00
650(1)	Miscellaneous Work	Contingent Sum	All Required	(CONTINGENT SUM)	\$ 20,000.00
670(1)	Painted Traffic Markings	Lump Sum	All Required	(LUMP SUM)	\$ 6,000.00
<b>RIAD TOTAL ESTIMATED COST OF CONSTRUCTION</b>				<b>\$ 598,615.00</b>	

Prepared By:



Gina DeBardelaben, P.E.  
**McLane Consulting, Inc.**  
[gina@mcclanecg.com](mailto:gina@mcclanecg.com)



RECEIVED

DEC 27 2021

Borough Clerk's Office  
Kenai Peninsula Borough

Dec 15<sup>th</sup> 2021

Concerning the ordinance for paving  
the Windage estates and South Bend  
Bluff. We are against this proposal.  
We feel as homeowners it is a large  
amount to absorb if we hold or sell  
property. The value on this property  
does not reflect this proposal. Our  
properties have done just as well with  
no paving. We are writing in because  
we will be gone for hearing. We own  
lot 15 across from duplexes.

Thank you for your time.  
Grant

Linda Christopher

Introduced by:	Mayor
Date:	01/04/22
Action:	Adopted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2022-002**

**A RESOLUTION ADOPTING AN ALTERNATE ALLOCATION METHOD FOR THE  
FY22 SHARED FISHERIES BUSINESS TAX PROGRAM AND CERTIFYING THAT  
THIS ALLOCATION METHOD FAIRLY REPRESENTS THE DISTRIBUTION OF  
SIGNIFICANT EFFECTS OF FISHERIES BUSINESS ACTIVITY IN THE COOK  
INLET FISHERIES MANAGEMENT AREA**

**WHEREAS,** AS 29.60.450 requires that for a municipality to participate in the FY22 Shared Fisheries Business Tax Program, the municipality must demonstrate to the Department of Commerce, Community, and Economic Development that the municipality suffered significant effects during calendar year 2020 from fisheries business activities; and

**WHEREAS,** 3 AAC 134.060 provides for the allocation of available program funding to eligible municipalities located within fisheries management areas (“FMA”) specified by the Department of Commerce, Community, and Economic Development; and

**WHEREAS,** 3 AAC 134.070 provides for the use, at the discretion of the Department of Commerce, Community, and Economic Development, of alternative allocation methods which may be used within fisheries management areas if all eligible municipalities within the area agree to use the method and the method incorporates some measure of the relative significant effect of fisheries business activity on the respective municipalities in the area; and

**WHEREAS,** the Kenai Peninsula Borough Assembly proposes to use an alternative allocation method for allocation of the FY22 funding available within the FMA14: Cook Inlet fisheries management area in agreement with all other municipalities in this area participating in the FY22 Shared Fisheries Business Tax Program;


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

**SECTION 1.** That the assembly certifies that the Kenai Peninsula Borough did suffer significant effects during calendar year 2020 from fisheries business activities that occurred within the Cook Inlet fisheries management area and wishes to apply for funding under the FY22 Shared Fisheries Business Tax Program.


**SECTION 2.** All eligible communities in the Cook Inlet fisheries management area will receive fifty percent (50%) divided equally, and fifty percent (50%) divided on a per capita basis.

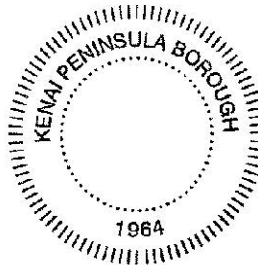
**SECTION 3.** That this resolution is effective immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 4TH DAY OF JANUARY, 2022.**

  
Brent Johnson, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



Yes:	Bjorkman, Chesley, Cox, Derkevorkian, Ecklund, Elam, Hibbert, Tupper, Johnson
No:	None
Absent:	None



# Kenai Peninsula Borough

## Finance Department

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### MEMORANDUM

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

**THRU:** Charlie Pierce, Mayor *CP*

**FROM:** Brandi Harbaugh, Finance Director *BH*

**DATE:** December 22, 2021

**SUBJECT:** Resolution 2022- 002, Adopting an Alternate Allocation Method for the FY22 Shared Fisheries Business Tax Program and Certifying that this Allocation Method Fairly Represents the Distribution of Significant Effects of Fisheries Business Activity in the Cook Inlet Fisheries Management Area (Mayor)

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In order for the Kenai Peninsula Borough to participate in the FY22 Shared Fisheries Business Tax Program, the Borough Assembly must submit a resolution indicating the adoption of an alternative method for allocation of the FY22 available funding. If the municipalities within each fisheries management area choose not to select the alternative method, it would then become necessary to gather and submit data on actual cost impacts of commercial fishing within each designated area. Given the relatively small amount of funds available, this approach would not be cost effective. A resolution adopting the alternative method is submitted for your approval.

The Kenai Peninsula Borough is located in the Cook Inlet Fisheries Management Area. The municipalities located in this area include Anchorage, Homer, Kenai, Kenai Peninsula Borough, Kachemak, Seldovia, Seward, and Soldotna. The FY22 program total allocation to be received by the borough is expected to be about \$2,807.42.



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

**Department of Commerce, Community,  
and Economic Development**

DIVISION OF COMMUNITY AND REGIONAL AFFAIRS

Fairbanks Office

455 Third Avenue, Suite 140  
Fairbanks, Alaska 99701-3110

Main: 907.451.2716

Fax: 907.451.2742

November 15, 2021

Kenai Peninsula Borough  
144 North Binkley Street  
Soldotna AK, 99669

Dear Municipal Official:

The Department of Commerce, Community, and Economic Development is pleased to announce availability of the **FY 2022 Shared Fisheries Business Tax Program**. The purpose of the program is to allocate a share of state fish tax collected outside municipal boundaries with municipalities affected by fishing industry activities. Municipalities around the state will share approximately \$1.9 million based on 2020 fisheries activity as reported by fish processors on their fish tax returns. Details of how the program works are included in the application under *Program Description*.

**Historically, your municipality along with the other communities in your fisheries management area FMA 14: Cook Inlet has filed using the Alternative Method found on the last four pages of this application.** A breakdown is included that details the communities in your FMA, in addition to the anticipated payment based on the agreed upon allocation method for your FMA. If this agreement is still in place with your FMA, you will only need to have your Council/Assembly pass the enclosed alternative method sample resolution in order to participate in the program.

If your FMA intends to change the alternative method of allocation, the new proposal must be submitted to our office no later than **January 15, 2022**. If an agreement cannot be made with all communities in your FMA, you will need to file using the standard method and claim your significant effects. Instructions on both of these methods are detailed in the application packet.

**DEADLINE FOR SUBMISSION OF COMPLETED APPLICATION IS  
FEBRUARY 15, 2022**

Applications can be scanned and emailed to [caa@alaska.gov](mailto:caa@alaska.gov) with the subject line **"Municipality Name, FY22, SFBT"**. If you have any questions about the program or require assistance in completing the application, please contact me at [kimberly.phillips@alaska.gov](mailto:kimberly.phillips@alaska.gov) or call (907) 451-2718.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kimberly Phillips".

Kimberly Phillips  
Grants Administrator III

Enclosure





Introduced by:	Johnson
Date:	01/04/22
Action:	Adopted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2022-003**

**A RESOLUTION DECLARING THE BOROUGH ASSEMBLY AND BOARD OF  
EDUCATION TO BE MALAPPORTIONED AND AUTHORIZING THE ASSEMBLY  
PRESIDENT TO APPOINT A REAPPORTIONMENT COMMITTEE**

**WHEREAS,** the Kenai Peninsula Borough has received the 2020 population figures from the U. S. Census Bureau; and

**WHEREAS,** AS 29.20.060 requires that assembly composition and apportionment be consistent with the equal representation standards of the Constitution of the United States; and

**WHEREAS,** it is apparent from the unequal rate of growth in the incorporated and unincorporated areas of the borough that the existing apportionment of the Borough Assembly no longer meets this requirement; and

**WHEREAS,** this malapportionment equally affects the Kenai Peninsula School District Board of Education, as the Board of Education is apportioned into districts which mirror those of the Borough Assembly;

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

**SECTION 1.** That the existing apportionment of the Kenai Peninsula Borough Assembly and the Kenai Peninsula Borough School District Board of Education are not consistent with the equal representation standards of the Constitution of the United States and are therefore declared to be malapportioned.

**SECTION 2.** That the Assembly President is authorized to appoint a Reapportionment Committee to review Assembly and Board of Education apportionment and the distribution of population within the Borough, and to develop one or more plans for Assembly and Board of Education apportionment for consideration by the Borough Assembly.

**SECTION 3.** That the Board of Education may participate on the Reapportionment Committee. Should the Board of Education desire to participate on the Reapportionment Committee it shall have an appointed representative on the committee.

**SECTION 4.** That the Reapportionment Committee shall file a report recommending one or more plans for Assembly and Board of Education apportionment with the Borough Clerk no later than Thursday, June 23, 2022, for inclusion in the Assembly Packet of July 5, 2022.

**SECTION 5.** That the Borough Assembly shall submit one or more plans for Assembly and Board of Education apportionment to the voters at the October 4, 2022 regular borough election.

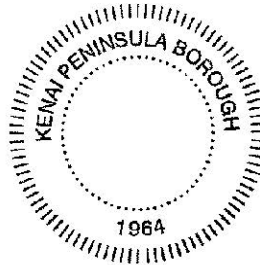
**SECTION 6.** That this resolution is effective immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 4TH DAY OF JANUARY, 2022.**

  
Brent Johnson, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



Yes: Bjorkman, Chesley, Cox, Derkevorkian, Ecklund, Elam, Hibbert, Tupper, Johnson  
No: None  
Absent: None

# Kenai Peninsula Borough

## Office of the Borough Clerk

### MEMORANDUM

**TO:** Kenai Peninsula Borough Assembly Members

**THRU:** Brent Johnson, Assembly President *BJ*

**FROM:** Johni Blankenship, Borough Clerk *JB*

**DATE:** December 22, 2021,

**RE:** Resolution 2022-~~003~~ Declaring the Borough Assembly and Board of Education to be Malapportioned and Authorizing the Assembly President to Appoint a Reapportionment Committee (Johnson)

The Borough has received the results of the 2020 Census. Following is a breakdown of the districts and the deviations:

District No.	Total Population	Target Population	Target Deviation	Target (%)	Total
D1	6,490	6,533	-43	-0.66	6,490
D2	6,604	6,533	71	1.09	6,604
D3	5,915	6,533	-618	-9.46	5,915
D4	6,795	6,533	262	4.01	6,795
D5	6,722	6,533	189	2.89	6,722
D6	6,662	6,533	129	1.97	6,662
D7	6,660	6,533	67	1.03	6,600
D8	6,504	6,533	-29	-0.44	6,504
D9	6,507	6,533	-26	-.40	6,507

<b>Total Population:</b>	<b>58,799</b>
Mean Target Population:	6,533
Mean Deviation:	159
Mean Percent Deviation:	2.44
Largest Positive Deviation:	262
Largest Negative Deviation:	-618
Overall Range in Deviation:	880
Overall Range in Deviation Percentage:	13.47




# Kenai Peninsula Borough Assembly

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## MEMORANDUM

**TO:** Assembly Members

**FROM:** Brent Johnson, Assembly President  for Brent Johnson

**DATE:** January 4, 2022

**RE:** Reapportionment Committee Members

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Per Section 2 of the resolution the Assembly President is authorized to appoint a Reapportionment Committee. The following individuals have been contacted and have agreed to participate as a member of the Kenai Peninsula Borough's 2022 Reapportionment Committee:

Willy Dunne, Homer  
Sue McClure, Seward  
Gary Davis, Sterling  
Crystal Collier  
Jason Tauriainen, Nikiski, Board of Education  
Jim Skogstad  
Virginia Morgan, Board of Education  
Debbie Cary, Ninilchik, Board of Education

Introduced by:	Bjorkman, Elam
Date:	01/04/22
Hearing:	01/18/22
Action:	Introduced and Set for Public Hearing on 01/18/22
Vote:	8 Yes, 1 No, 0 Absent
Date:	01/18/22
Action:	Adopted as Amended
Vote:	8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2022-004**

**A RESOLUTION SUPPORTING THE CONSTITUTIONAL RIGHT OF ALASKA  
GRAND JURIES TO INVESTIGATE AND MAKE RECOMMENDATIONS ON PUBLIC  
WELFARE AND SAFETY CONCERNS**

**WHEREAS,** Article 1, Section 8 of the Constitution of the State of Alaska states, “The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended”; and

**WHEREAS,** public welfare and safety is protected by the rule of law and equal protection under the law. These tenets are keystones in self-governing societies and essential to public accountability, transparency and trust in our system of justice; and

**WHEREAS,** Alaska Statute 12.40.030 – section titled “Duty of inquiry into crimes and general powers” – provides, “The grand jury shall inquire into all crimes committed or triable within the jurisdiction of the court and present them to the court. The grand jury shall have the power to investigate and make recommendations concerning the public welfare or safety”; and

**WHEREAS,** Alaska Statute 12.40.040 – section titled “Juror to disclose knowledge of crime” – provides, “If an individual grand juror knows or has reason to believe that a crime has been committed that is triable by the court, the juror shall disclose it to the other jurors, who shall investigate it”; and

**WHEREAS,** the Alaska Grand Jury Handbook, page 26, states that grand jury investigations can be initiated “by members of the grand jury” and that we believe public requests for a grand jury investigation should be given to the grand jury; and

**WHEREAS,** constituents allege that grand juries in Kenai and Anchorage have been denied their constitutional right and duty to investigate and recommend on public welfare and safety concerns; and

**WHEREAS,** over 500 signatures on a public petition, asking for a grand jury investigation into serious public welfare and safety concerns, has not been given to the grand jury; and

**WHEREAS,** the oath of office that all elected members of this assembly take, require that we protect and defend the Constitution of the State of Alaska; and

**WHEREAS,** the alleged denial of constitutional rights guaranteed by the Constitution of the State of Alaska is of great concern to this elected body of Alaskan citizens;

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

**SECTION 1.** That the assembly supports the need for a mechanism for grand juries to investigate and make recommendations concerning the public welfare or safety pursuant to Article 1, Section 8 of the Constitution of the State of Alaska. The assembly requests the legislature enact legislation that provides an adequate mechanism under state law for the public to trigger independent grand jury investigations.

**SECTION 2.** That the assembly upholds the federal and state constitutional principles of the rule of law and equal protection under the law. These principles are the bedrocks of self-governing societies and they are essential to building and maintaining accountability, transparency, and trust in our system of justice.

**SECTION 3.** That a copy of this resolution shall be provided to the Governor of the State of Alaska, the Alaska Legislature, the Alaska Attorney General, the Kenai and Anchorage District Attorneys, the presiding judges in both Kenai and Anchorage, and to the Alaska Supreme Court.

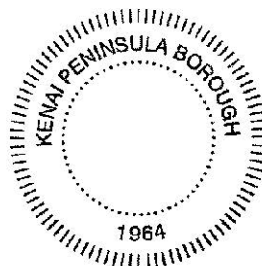
**SECTION 4.** That this resolution is effective immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 18TH DAY OF JANUARY, 2022.**

ATTEST:

  
John Blankenship, MMC, Borough Clerk

  
Brent Johnson, Assembly President





Yes: Bjorkman, Chesley, Cox, Derkevorkian, Ecklund, Elam, Tupper, Johnson  
No: None  
Absent: Hibbert

# Kenai Peninsula Borough

## Legal Department

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### MEMORANDUM

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

**THRU:** Sean Kelley, Borough Attorney *SK*

**FROM:** Todd Sherwood, Deputy Borough Attorney *TS*

**DATE:** January 18, 2022

**RE:** Investigative Grand Juries in Alaska and Citizen-Initiated Grand Juries  
in Other States - Resolution 2022-004 (Bjorkman, Elam)

---

You asked us to provide information in response to two questions:

**1. Has the investigative and recommendation power of Alaska grand juries been used in the past?**

Yes. The "Alaska Grand Jury Handbook – Alaska Court System – May 2019" lists at least 24 different times the process has been used by grand juries throughout the state (or territory) from the mid-1950s to the early 1990s. The information is not presented as an exhaustive list, but it does appear that there has been little use of the process since the early 1990s.

Alaska investigative grand juries have looked into everything from complex crimes and patterns of crime to alleged misconduct in local and state government to jails and traffic safety. Most of the examples given in the 2019 Grand Jury Handbook appeared in an Alaska Judicial Council report in February 1987 entitled: "The Investigative Grand Jury in Alaska".

Probably the most remarkable example of an investigative grand jury in Alaska is one that sat in Juneau for several months in 1985 to investigate matters involving a lease of state offices that then Governor William Sheffield had been involved in. The grand jury report became the impetus for impeachment proceedings against the governor who ultimately was not removed from office. [Alaskans and impeachment: The case of Gov. Bill Sheffield \(adn.com\)](#) ; [Alaska's governor may face impeachment for lease award - CSMonitor.com](#)

Page -2-  
January 18, 2022  
RE: R2022-004

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**2. Does the process proposed in SB 15 and KPB Resolution 2022-004, for citizen-initiated grand juries exist in any other states?**

Yes. Six states have provisions for citizen-initiated grand juries: New Mexico, North Dakota, Oklahoma, Nevada, Kansas and Nebraska. For some states the provision is found in their state constitution (New Mexico and Oklahoma); for others it is based on statute (North Dakota, Nevada, Kansas, and Nebraska). From a review of case law and news reports it appears - generally speaking - that the power is exercised on an infrequent basis.

Each of the six states have some provision for the number of signatures needed on a petition to convene a grand jury. Typically, it is based on a certain percentage of the number of voters voting in the county at issue in the last election. There are also provisions for review by a judge and for an appeal process if the judge does not convene the grand jury.

One recent use of the citizen-initiated grand jury that received national attention in 2021, concerned a Kansas woman who alleged she had been raped and was frustrated that the prosecuting attorney would not bring charges against the suspect. (Later the prosecutor did gain a conviction for the non-sexual offense of aggravated battery). The woman was able to have a grand jury convened using the citizen-initiated grand jury process. Her case for sexual assault was heard by the grand jury which ultimately did not find enough evidence to indict the suspect for rape. [McPherson County woman calls up her own grand jury after alleged rape \(cjonline.com\)](#) ; [Grand jury called by Kansas woman returns no rape charges - ABC News \(go.com\)](#)



**Turner, Michele**

---

**Subject:** FW: SB 15 from the 31st Alaska State Legislature Text and documents

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**From:** Bjorkman, Jesse

**Sent:** Tuesday, January 18, 2022 11:40 AM

**To:** Blankenship, Johni <[JBlankenship@kpb.us](mailto:JBlankenship@kpb.us)>

**Subject:** SB 15 from the 31st Alaska State Legislature Text and documents

Johni,

Here is the link to BASIS and SB 15 from the 31st legislature. Here people will find the full text of the bill, the sponsor statement from Sen Micciche, sectional analysis, as well as some other interesting reading regarding the topic.

[http://www.akleg.gov/basis/Bill/Detail/31?Root=SB%2015#tab5\\_4](http://www.akleg.gov/basis/Bill/Detail/31?Root=SB%2015#tab5_4)

Please forward to the Assembly for the purpose of informing discussion on Resolution 2022-004 Grand Juries.

Jesse Bjorkman

## Turner, Michele

---

**From:** Blankenship, Johni  
**Sent:** Tuesday, January 18, 2022 8:39 AM  
**To:** Turner, Michele  
**Subject:** FW: <EXTERNAL-SENDER>letter opposed to ordinance 2022-004

Public comment

---

**From:** Alex Koplin <bubba@horizonsatellite.com>  
**Sent:** Monday, January 17, 2022 10:06 AM  
**To:** Blankenship, Johni <JBlankenship@kpb.us>  
**Cc:** Mike Tupper <pvtupper@gmail.com>; Chesley, Lane <lchesley@kpb.us>  
**Subject:** <EXTERNAL-SENDER>letter opposed to ordinance 2022-004

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

Good morning,  
Could you please forward this to the assembly members and the mayor?  
Thank you.  
To Kenai Borough Assembly members,

I am sorry to see the 2022-004 resolution moving forward. This is a confusing resolution. (Something to do with citizens bringing charges to a grand jury?) Not sure what that really means or would look like.

But why is the Borough dealing with this issue? It sounds like a political resolution and my feeling is that the Borough should not be dealing with this. It is politics. In my opinion, this does not seem like good governance. There are other means that this resolution should go forward. For example, the judicial branch should deal with this and the person that came up with the resolution should go that route. As a taxpayer to the Borough, I feel the Assembly should be working mostly on infrastructure projects. It bothers me that you spend time on a resolution that involves the whole state and the courts. Why are we really pushing for this ordinance?

The letters in support for this resolution are almost all from outside our Borough- is this a state issue? Also, the letters I read all seem to be copied and pasted and they refer to the resolution as 2022. They omitted the 004-and again they are not from our Borough. This resolution seems to be partisan in nature and I think any resolution should have non-partisan support. Resolutions should be positive and most residents agree to the spirit of the ordinance.

I hope you don't spend a lot of time on this-and do the good governing you have been doing when you stay away from the hot button issues that are constantly dividing us.

Sincerely,

Alex Koplin

Homer, Alaska



## Turner, Michele

---

**From:** Blankenship, Johni  
**Sent:** Tuesday, January 18, 2022 8:36 AM  
**To:** Turner, Michele  
**Subject:** FW: <EXTERNAL-SENDER>Grand Juries

Public comment

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**From:** sstubster@reagan.com <sstubster@reagan.com>  
**Sent:** Monday, January 17, 2022 11:50 AM  
**To:** G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Grand Juries

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

We would like to voice our support for the passing of this resolution:

“A RESOLUTION SUPPORTING THE CONSTITUTIONAL RIGHT OF ALASKA GRAND JURIES TO INVESTIGATE AND MAKE RECOMMENDATIONS ON PUBLIC WELFARE AND SAFETY CONCERNS”

Thank you,

John and Sandy Stubblefield  
30540 Stubblefield Drive,  
Soldotna, AK 99669

907-398-1812

---

**Nikiski Community Council**

P.O.Box 7011

Nikiski, ak. 99635

(907) 394-5807 (123)

[northpeninsulacommunitycouncil@gmail.com](mailto:northpeninsulacommunitycouncil@gmail.com)

EIN 92-0173778

January 17,2022

**To: Kenai Peninsula Borough assembly,**

The Nikiski Community Council is writing a letter of support for Resolution 2022-004, Supporting the Constitutional Right of Alaska Grand juries to Investigate and Make Recommendations on Public Welfare and Safety Concerns (Bjorkman, Elam). We support Nikiski assemblyman Jesse Bjorkman on his efforts regarding this resolution.

Jason Ross

President, Nikiski Community Council

## Turner, Michele

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**From:** Blankenship, Johni  
**Sent:** Tuesday, January 18, 2022 8:35 AM  
**To:** Turner, Michele  
**Subject:** FW: <EXTERNAL-SENDER>FRCA Resolution  
**Attachments:** FRCA%20Resolution%20copy.docx

Public comment

---

**From:** DONAVAN VICKYSU FRITZ <DVSFRITZ@msn.com>  
**Sent:** Monday, January 17, 2022 2:02 PM  
**To:** Blankenship, Johni <JBlankenship@kpb.us>  
**Subject:** <EXTERNAL-SENDER>FRCA Resolution

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

I'm forwarding the FRCA Resolution, which we unanimously approved at Thursdays board meeting. We decided that the changes we made to our original resolution was important enough to go back out to the community for them to peruse and make comments on. We also wanted to get the resolution to tonight's Borough meeting. We have posted it on our FRCA web page as a draft. I'm am forwarding to you as a draft and will forward the smooth in a week after final comments from the community have been incorporated. I hope this doesn't cause to much confusion.

Donavan Fritz  
FRCA Board Member

Sent via the Samsung Galaxy Note20 Ultra 5G, an AT&T 5G smartphone  
Get [Outlook for Android](#)



# **This resolution is a DRAFT**

*This matter is of such concern that we want to take more time to consult with the  
Funny River Community.*

## **A RESOLUTION SUPPORTING INTRODUCTION, BY THE KENAI PENINSULA BOROUGH ASSEMBLY, OF A RESOLUTION SUPPORTING OUR CONSTITUTIONAL RIGHT FOR ALASKAN GRAND JURIES TO INVESTIGATE AND RECOMMEND ON PUBLIC WELFARE AND SAFETY CONCERNS**

**WHEREAS**, Article 1, Section 8 of the Constitution of the State of Alaska clearly states: *“The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended”*; and

**WHEREAS**, Alaska Statute 12.40.030 clearly states: *“Duty of inquiry into crimes and general powers. The grand jury shall inquire into all crimes committed or triable within the jurisdiction of the court and present them to the court. The grand jury shall have the power to investigate and make recommendations concerning the public welfare or safety.”*; and

**WHEREAS**, Alaska Statute 12.40.040 clearly states: *“Juror to disclose knowledge of crime. If an individual grand juror knows or has reason to believe that a crime has been committed that is triable by the court, the juror shall disclose it to the other jurors, who shall investigate it.”*; and

**WHEREAS**, the Alaska Grand Jury Handbook, page 26, clearly states that grand jury investigations can be initiated *“by members of the grand jury”* and that public requests for a grand jury investigation will affirmatively be given to the grand jury; and

**WHEREAS**, grand juries in Kenai and Anchorage have been affirmatively denied their constitutional right and duty to investigate and recommend on public welfare and safety concerns – and been affirmatively denied their legal right and duty to investigate crime (*See Exhibit A – grand juror affidavits*); and

**WHEREAS**, the Alaska Constitutional Convention, and other authorities, confirms the grand jury’s most important duty – and reason for Article 1, section 8 - is to investigate and recommend on public welfare and safety concerns – and confirms that citizens can appeal directly to the grand jury for such an investigation and recommendation (*See Exhibit B - “The grand jury can be appealed to directly, which is an invaluable right to the citizen.”*); and

**WHEREAS**, the Alaska Judicial Council's official report, “The Investigative Grand Jury in Alaska” also confirms the grand jury's most important duty is to investigate and recommend on public concerns – and confirms this power cannot be hindered (*See Exhibit B - “The Alaska Constitution gives grand juries the power to investigate into and make recommendations addressing virtually anything of public concern. This broad general power can never be hindered or delayed.”*) - and confirms that public petitions and requests are a proper way to initiate such investigations and that such public petitions and requests must be given to the grand jury; and

**WHEREAS**, over 500 signatures on a public petition, asking for a grand jury investigation into serious public welfare and safety concerns, has not been given to the grand jury (*See Exhibit C*); and

**WHEREAS**, this elected body of Alaskan citizens has seen evidence supporting the above allegations; and

**WHEREAS**, the denial of constitutional rights, rights which are guaranteed by the Constitution of the State of Alaska, is of great concern to this elected body of Alaskan citizens.

**WHEREAS**, this board does not believe that S.B.15 will provide a solution to this problem and would potentially make the problem worse;

**THEREFORE, WE RECOMMEND,**

1. This matter be delivered to and investigated by a grand jury without interference.
2. A copy of this resolution shall be provided to the Governor of the State of Alaska, the Alaska legislature, Alaska Attorney General, the Kenai and Anchorage Attorneys, the presiding judges in Kenai and Anchorage, to the Grand Juries in Kenai and Anchorage.

DRAFT

Page 2 of 2

## Turner, Michele

---

**From:** Blankenship, Johni  
**Sent:** Tuesday, January 18, 2022 8:34 AM  
**To:** Turner, Michele  
**Subject:** FW: <EXTERNAL-SENDER>Resolution for calling for a Grand Jury investigation

Public comment

---

**From:** James Isaak <james@alaskawildlife.com>  
**Sent:** Monday, January 17, 2022 4:06 PM  
**To:** G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Resolution for calling for a Grand Jury investigation

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

My name is James Isaak. I was born in Seward and raised in Soldotna where I still reside for the last 62 years. My physical address is 32531 Doc N Amy Street Soldotna.  
My wife and I attended a hearing about 15 years ago for a friend of ours that was suing his attorney for malpractice. There is a Alaska statute that specifies how long you have to file a brief. So the attorney our friend was suing didn't have his brief done in time. The judge said how much time do you need. The attorney responded,I would like a couple more weeks. The judge said no problem you got it.

Our friend stood up and said excuse me your honor, (quoted the judge the alaska statute) The judge turned to our friend and said, (I don't care what that statue says I am going to give him 2 more weeks. Both my wife and I were mortified. Here is a judge that is in the highest position and has no regard for what the law says. So how can any of us have any hope in our judicial system when the judges make up their own laws and don't abide by the laws that are written.

Since then we have seen more than enough evidence for a grand jury investigation in so many of these matters.

Thank you so much for your attention as this is so important.

My wife and I would love to be there in person but are currently traveling in Tennessee. James Isaak



## Turner, Michele

---

**From:** Blankenship, Johni  
**Sent:** Tuesday, January 18, 2022 8:34 AM  
**To:** Turner, Michele  
**Subject:** FW: <EXTERNAL-SENDER>I agree with KBP Resolution 2022-004

Public comment

---

**From:** Henry Kroll <hankkroll@gmail.com>  
**Sent:** Monday, January 17, 2022 6:02 PM  
**To:** G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
**Subject:** <EXTERNAL-SENDER>I agree with KBP Resolution 2022-004

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

**I support KBP's Resolution 2022-004.**

### **Kenai Peninsula Borough Assembly Introduces a Resolution Supporting the Right of Alaskan Grand Juries to Investigate**

With an 8 to 1 decision on January 4, 2022, the Kenai Peninsula Borough Assembly approved introduction of **Resolution 2022-004**, titled:

***"A RESOLUTION SUPPORTING THE CONSTITUTIONAL RIGHT OF ALASKA GRAND JURIES TO INVESTIGATE AND MAKE RECOMMENDATIONS ON PUBLIC WELFARE AND SAFETY CONCERNS"*** Link to entire resolution:

<https://kpb.legistar.com/View.ashx?M=F&ID=10378928&GUID=2B57E27A-102F-4036-8ED6-BA3E1270B60D>

One section of **Resolution 2022-004** states: "***WHEREAS***, constituents allege that grand juries in Kenai and Anchorage have been denied their constitutional right and duty to investigate and recommend on public welfare and safety concerns;"

The memorandum accompanying **Resolution 2022-004** states, in part:

*"In recent years concerns have been brought forward by Kenai Peninsula Borough residents about our court system. We believe that this resolution provides a path to improve the accountability and transparency of the judicial system and its officers... Without judgment as to the merits of these complaints, we believe the remedy in situations like these is a constitutional one. As stated in Article 1 Sec 8 of the Alaska Constitution: 'The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended.' In the extraordinary instance in which there are meritorious claims made against officers of the court, we believe grand juries must be allowed to impartially look at the evidence and make a recommendation as to next steps."* Link to entire memorandum:

<https://kpb.legistar.com/View.ashx?M=F&ID=10369800&GUID=FA1AAA22-A6FA-4E6C-87CB-05A496CCB63B>

In-person public testimony on **Resolution 2022-004** will be allowed during the **January 18, 2022** Kenai Peninsula Borough Assembly meeting, which starts at **6 pm** in the white Borough Building at 144 North Binkley Street, Soldotna, AK 99669. You may also testify during this meeting via zoom: Zoom Meeting ID: **884 7373 9641** Passcode: **671108** (Landlines dial **1-646-568-7788** first)

To email comments anytime (reference **Resolution 2022-004**): [assemblyclerk@kpb.us](mailto:assemblyclerk@kpb.us)

## Turner, Michele

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**From:** Blankenship, Johni  
**Sent:** Tuesday, January 18, 2022 8:34 AM  
**To:** Turner, Michele  
**Subject:** FW: <EXTERNAL-SENDER>David Haeg's Resolution 2022-004 Testimony  
**Attachments:** David Haeg's January 18 Kenai Peninsula Borough Assembly Testimony.docx; Alaska Grand Jury Powers, Rights, and Duties.docx

Public comment

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**From:** haeg@alaska.net <haeg@alaska.net>  
**Sent:** Monday, January 17, 2022 8:46 PM  
**To:** G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
**Subject:** <EXTERNAL-SENDER>David Haeg's Resolution 2022-004 Testimony

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Assembly Clerk,

Attached is a written copy of my testimony to the Kenai Peninsula Borough Assembly, concerning Resolution 2022-004. Also attached is a copy of the authorities upon which my testimony relies. Please read them before the 6 pm, January 18 Assembly meeting if you can find the time.

If it is allowed, I ask that my written testimony and list of authorities be permanently attached to Resolution 2022-004.

At the January 18, 2022 Assembly meeting I will read the highlighted portions of my written testimony, as I only have 3 minutes in which to testify verbally.

Thank you and if you have any questions please feel free to contact me anytime.

Most Sincerely,

David Haeg  
(907) 398-6403  
[haeg@alaska.net](mailto:haeg@alaska.net)



## David Haeg's January 18, 2022 Testimony on Kenai Peninsula Borough Assembly Resolution 2022-004

**Thank you. My name is David Haeg and I'm a lifelong Borough resident.**

The Funny River Community Association Board debated this resolution and the decision to resurrect Senate Bill 15 (killed in committee) to solve the current **Constitutional Crisis** created by public officials unconstitutionally and illegally stopping seated Grand Juries from investigating direct evidence of crime and corruption by public officials, which is a serious public welfare and safety concern.

Alaska Constitution, Article 1, Section 8: *The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended.*

Alaska Constitutional Convention, page 1307 “*The power of grand juries to inquire into the willful misconduct in office of public officers, and to find indictments in connection therewith, shall never be suspended. The grand jury is preserved, for all purposes, particularly for investigation of public officials.*”

It was realized SB15 does **nothing** to address the fact public officials are unconstitutionally and illegally stopping Grand Jury investigations. SB15 only tries to address how requests for a Grand Jury investigation get to the Grand Jury. Even if SB15 were passed, and requests were given to the Grand Jury, there still would be **absolutely nothing** to stop public officials from once again ordering Grand Juries to stop investigating – exactly as happened now twice in Kenai and twice in Anchorage.

The Funny River Board decided Alaskans could not wait the years it will take just to **possibly** pass SB15, which again does nothing to address the main problem.

How many more Alaskan families may be unconstitutionally and illegally **ground to bits** during this delay?

And SB15 may make things far worse by placing a possibly corrupt judge as the gatekeeper to all further requests for a Grand Jury investigation of evidence that criminally implicates our judges and only judge investigator for the last 33 years.

The Funny River Board unanimously voted that the most effective, appropriate, and timely solution is that which Alaska's Founding Fathers gave us to fix

situations exactly like this: a Grand Jury investigation complete with written recommendations and/or indictments after the conclusion of its investigation.

The Funny River Board also stated: *“This matter is of such concern that we want more time to consult with the Funny River Community.”*

Without any reservations whatsoever, I agree with the Funny River Board.

So I humbly ask you to amend this Resolution by **replacing** the SB15 solution with a request for a thorough Grand Jury investigation into this matter – without interference by anyone.

I ask the Resolution state that it **SHALL** be given to the Grand Juries in both Kenai and Anchorage. I also ask that the Resolution state that attached to it at all times **SHALL** be **ALL** evidence and authority given to this Assembly on this matter – including but not limited to: (1) Grand Juror affidavits which, if unrefuted, prove that state judges and attorneys, up to and including Alaska’s Deputy Attorney General, are unconstitutionally and illegally stopping seated Grand Juries from investigating crimes by public officials (**AS 11.56.590** Jury Tampering); (2) evidence (much of it certified by Superior Court Judge Stephanie Joannides) which, if unrefuted, proves Alaska’s only judge investigator for the last 33 years is falsifying official investigations and certified written documents to cover up for corrupt judges – a powerful motive for judges to corruptly stop Grand Jury investigations into this; (3) certified court transcripts evidencing a felony criminal conspiracy and cover-up by a district attorney and law enforcement – a powerful motive for that same district attorney, his equals in other cities, and Alaska’s Deputy Attorney General to corruptly stop Grand Jury investigations into this; and (4) Grand Jury powers, rights, and duties under Alaska’s Constitution, laws, and court rules. This includes but is not limited to: (A) the duty to investigate corruption by public officials and offices without interference from anyone; (B) the right to exclude all persons from the grand jury room during its investigation; (C) the power to subpoena witnesses, place them under oath, and question them; (D) the power to write recommendations and issue indictments at the conclusion of its investigation; (E) the right to assistance by private investigators and/or private attorneys; (F) the right to become or request a “Special Grand Jury” – one tasked with investigating, recommending, and/or indicting on single issue, as happened in Watergate; and (G) **the right for the Grand Jury to ask the public to protect the Grand Jury from interference by public officials.**

**Alaska Statute 12.40.030:** “Duty of inquiry into crimes and general powers. *The grand jury shall inquire into all crimes committed or triable within the jurisdiction of the court and present them to the court. The grand jury shall have the power to investigate and make recommendations concerning the public welfare or safety.*”

**Alaska Statute 12.40.040:** “Juror to disclose knowledge of crime. *If an individual grand juror knows or has reason to believe that a crime has been committed that is triable by the court, the juror shall disclose it to the other jurors, who shall investigate it.*”

It should also ask the Grand Jury to investigate, research, and recommend a long-term solution to this problem, such as additional clarifying legislation (like **AS 12.40.030** and **AS 12.40.040** do) and/or material like an “Investigative Grand Jury Handbook”, written by the public and required to be given to and read by all prospective Grand Jurors – stating all powers, rights, and duties of the Grand Jury to investigate public officials and offices.

Finally, I ask you to consider that the Funny River Board stated that this is so serious the solution must not be rushed, for it must not only address the current **Constitutional Crisis** promptly and effectively, it must prevent it from ever happening again.

This may require delaying a vote and forming a committee to research the best solution – hopefully with broad public input – for right now this Resolution has an incredibly flawed solution in SB15.

Thank you.



# Alaska Grand Jury Powers, Rights, and Duties

**Alaska Constitution, Article 1, Section 8:** *The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended.*

**Alaska Statute 12.40.030:** “Duty of inquiry into crimes and general powers. *The grand jury shall inquire into all crimes committed or triable within the jurisdiction of the court and present them to the court. The grand jury shall have the power to investigate and make recommendations concerning the public welfare or safety.*”

**Alaska Statute 12.40.040:** “Juror to disclose knowledge of crime. *If an individual grand juror knows or has reason to believe that a crime has been committed that is triable by the court, the juror shall disclose it to the other jurors, who shall investigate it.*”

## Alaska Constitutional Convention (1955-1956)

Proposal No. 7 *“The power of grand juries to inquire into the willful misconduct in office of public officers, and to find indictments in connection therewith, shall never be suspended.”*

[After extensive discussion by the delegates, this was modified so grand juries could investigate things in addition to willful misconduct in office of public officers, resulting in the current verbiage in Article 1, Section 8 of Alaska’s Constitution.]

**Taylor at 1324:** *“I am against the use of a grand jury in criminal prosecutions...I would say retain the grand jury all right for investigative purposes of officials in public institutions... it serves no useful propose except for just investigative purposes.”*

**Hellenthal at 1325-1406:** *“The grand jury should certainly and definitely be preserved as an investigatory agency. There is no question about it at all. I agree with Mr. Barr that the investigatory power of a grand jury is extremely broad...I think a grand jury can investigate anything...I think that the broad statement of power that Mr. Barr asked for is proper and healthy.”*

**Kilcher [Yule Kilcher of Homer, Alaska] at 1328:** *“I recall personally a situation eight or nine years ago that brought it to my attention forcefully how the grand jury can be utterly vital. The grand jury in its investigative power as well as for the fact that it is sitting there as a panel sometimes is the only recourse for a citizen to get justice, to get redress from abuse in lower courts...it is the only safeguard a citizen occasionally has when for any reason and very often for political reasons, a case is not dealt with properly. The grand jury can be appealed to directly, which is an invaluable right to the citizen.”*

## The Investigative Grand Jury in Alaska

### **(1987 Alaska Judicial Council report upon request by Alaska State Senate)**

Art. I, Sec. 8 of the Alaska Constitution states:

*"The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended."*

"Public welfare or safety" has been interpreted very broadly and includes concerns with public order, health, or morals. Black's law Dictionary defines general welfare as *"the government's concern for the health, peace, morals, and safety of its citizens."* "Suspend" is defined in case law and by Black's as *"to cause to cease for a time; to postpone; to stay, delay or hinder."* In other words, the Alaska Constitution gives grand juries the power to investigate into and make recommendations addressing virtually anything of public concern. This broad general power can never be hindered or delayed.

State grand juries have often exercised investigative powers to battle political corruption. At times, that have acted on their own initiative in the face of opposition from a district attorney. In New York City an extensive grand jury probe toppled the notorious Boss Tweed and his cronies. Since the district attorney was closely associated with Tweed, the panel acted independently of him, conducting its own investigation and interviewing witnesses without the prosecutor's help.

Alaska's grand jury serves two distinct functions. First, it acts as the charging body for crimes committed within its jurisdiction. The grand jury considers evidence presented to it by the state district attorney who has investigated the crime or crimes in each case. The grand jury decides whether the district attorney's evidence is sufficient to call for the individual or individuals facing the charge to stand trial. If the majority of grand jurors finds the evidence sufficient, the foreperson of the grand jury signs the indictment prepared by the district attorney and marks it a true bill. If the majority of grand jurors do not find the evidence sufficient, the foreperson marks the indictment not a true bill, and signs what is then referred to as a no-true-bill. This function is the grand jury's charging function.

Although infrequent, the grand jury can also sit as an investigative body. In response to instructions from the court or the district attorney, or in response to petitions or requests from the public, or on the initiative of a majority of the members of the grand jury, the grand jury may investigate concerns affecting the public welfare or safety. These public welfare or safety concerns may arise from criminal or potentially criminal activity, or they may involve noncriminal public welfare or safety matters. After completing its investigation, if the grand jury has found sufficient evidence to charge an individual or individuals with a crime, the grand jury may ask the district attorney to prepare an

indictment or indictments. The foreperson of the grand jury then signs the indictment designating it a true bill.

The clear intent of the drafters of the state constitution was to provide the grand jury with broad investigative powers. The language of state statutes is equally broad and no case law in Alaska defines the appropriate subject matter or scope of grand jury investigations.

### **Constitutional Convention**

The Committee on the Preamble and Bill of Rights of the Alaska Constitutional Convention submitted a proposal entitled “*Grand Juries, Indictments and Information*”. The clause that addressed the investigative function read:

*...the power of grand juries to inquire into the willful misconduct in office of public officers, and to find indictments in connection therewith, shall never be suspended.*

The commentary of the section stated: *‘The grand jury is preserved, for all purposes, particularly for investigation of public officials.’*

*‘...I am against the use of a grand jury in criminal prosecution...I would say retain the grand jury all right for investigative purposes of officials in public institutions...it serves no useful purpose except for just investigative purposes.’ (Taylor, 1324)*

*‘The grand jury should certainly and definitely be preserved as an investigatory agency. There is no question about it at all...’ (Hellenthal, 1325)*

The debate suggests that some votes for mandatory grand jury indictment may have been cast to assure free exercise of the grand jury’s investigative function:

*‘[I]t is true the investigative grand jury had been preserved in the bill as set forth here. However, an investigative grand jury will only be called under certain specific circumstances, and somebody is going to have to find conditions pretty bad before an investigative grand jury will be called. Whereas a grand jury which is empaneled regularly, once or twice a year in our division, has full investigative power as well as the power to consider indictments. The grand jury is there and may take any step that it feels may be necessary towards investigations’ (Davis, 1326)*

*‘...The grand jury in its investigative power as well as for the fact that it is sitting there as a panel sometimes is the only recourse for a citizen to get justice...’ (Kilcher, 1328)*

*‘The new amendment does not make any mention of the investigating powers of the grand jury, and I’ve been told they would still have those powers under the Federal Constitution, but I believe it should be mentioned in our constitution because I think it is one of the most important duties of the grand jury. (Barr, 1344)*

*Mr. President, my suggestion was that the word “detrimental” be stricken and the word “involving” being inserted because I agree with Mr. Bare that the investigatory power of a grand jury is extremely broad, not as narrow as Mr. Rivers contends. I think a grand jury can investigate anything, and it is true that there is little protection against what they call in the vernacular, a runaway grand jury, but in the history of the United States*



*there have been few runaway grand jury's, extremely few, and I think that the broad statement of power that Mr. Barr asked for is proper and healthy. (Hellenthal, 1406)*

## **Initiation: Law and Practice in Alaska**

Statutory procedures in Alaska distinguish initiation of an investigation from the exercise of the grand jury's usual charging duties. One Alaska statute provides that *"if an individual grand juror knows or has reason to believe that a crime has been committed which is triable by the court, the juror shall disclose it to the other jurors, who shall investigate it."* This provision suggests that an investigation might be initiated at the request of an individual grand juror.

Prosecutors interviewed in the course of this study noted that private citizens occasionally request the grand jury to investigate a matter. Prosecutors report that they ordinarily review these requests before presenting them to the grand jury and made a recommendation regarding the grand jury's action.

## **The Reportorial Power of the Alaska Grand Jury (1986 Duke Law Review, 295-330)**

### **The History of the Grand Jury's Reporting Power**

The principal functions of the grand jury is to serve *"as a body of accusers sworn to discover and present for trial persons suspected of wrongdoing and as a protector of citizens against arbitrary and oppressive governmental action."*

Prior to Alaska's statehood, the territorial legislature adopted a statute that required grand juries to investigate the conditions and management of prisons and judicial offices. In 1954, a Ketchikan grand jury investigated police corruption in connection with prostitution and returned a famous report that led to the indictments of the chief of police and the United States Attorney in Ketchikan.

After statehood, article I, section 8 of the Alaska Constitution granted grand juries the power to "investigate and make recommendations concerning the public welfare or safety." Grand juries have also issued reports critical of specific individuals. For example, in 1967, a Fairbanks grand jury investigated jail conditions and returned a report criticizing management of the jail generally and holding the named superintendent responsible. And in 1975, an Anchorage grand jury investigated the criminal justice system and made recommendations concerning a correctional officer, the public defender's office, and the district attorney's office.

Courts in jurisdictions favoring reports have emphasized the growing complexity of modern government "that defies the best intentions of the citizen to know and understand it." With an ever-expanding government bureaucracy, public employees become further removed from those officials directly answerable to the voters, while the public's awareness of the activities even of elected officials lessens. If the people are to remain

confident in this type of government, there should be a body of citizens capable of monitoring official wrongdoing.

Proponents of the grand jury's reportorial power maintain that the grand jury is the appropriate body to accomplish this important purpose. Increasing government complexity has spurred the adoption of other investigatory bodies. These include legislative and executive bodies as well as private organizations, most notably the news media. These bodies may lead to greater accountability among public officials, but they are unlikely to be as effective as the grand jury in achieving impartial disclosure of official misconduct. A comparison of the grand jury with these groups suggests that the grand jury should continue as an investigatory body.

One significant problem with legislative and executive committees is that political concerns often influence their investigations.

Since the outcome is often politically influenced, there may be an intentional lack of thoroughness in legislative and executive investigations.

Finally, no overseeing body exist to monitor the conduct of these investigatory bodies.

The grand jury is not without shortcomings as an investigatory body. Jurors are not professional investigators. Because grand juries have limited budgets, they seldom hire their own counsel or detectives. This increases the grand jury's dependence on the prosecutor to perform the investigation and to conduct the proceedings. If the prosecutor is able to dominate the proceedings, he may interject his own political ambitions into the investigation.

Although some authorities suggest that grand juries are not completely free from political motivations, most agree that jurors do not have the same sensitivity to political considerations as legislative or executive committees. The subpoena power possessed by grand juries facilitates complete investigations.

Alaska Constitution, article I, section 8 provides in pertinent part: "The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended." No Alaska appellate court has addressed the meaning of this sentence.

On December 15, 1955, the Alaska Constitutional Committee on the Preamble and the Bill of Rights submitted Committee Proposal Seven, which included the section on grand jury authority. Proposal Seven initially provided in pertinent part: "[T]he power of grand juries to inquire into the willful misconduct in office of public officers, and to find indictments in connection therewith shall never be suspended."

The Convention, however, did not adopt the Proposal. Instead, the framers approved a slightly altered version of an amendment to Proposal Seven offered by Delegate Barr. On January 6, 1956, Delegate Barr proffered the following amendment: "The power of grand juries to investigate and make recommendations concerning conditions detrimental to the public welfare shall never be suspended." This provision grants broad investigatory powers to the grand jury. Although courts in other jurisdictions disagree as to whether the

power to investigate, standing alone, implies the power to report the results of such an inquiry, the Convention expressly granted Alaska grand juries the power to make recommendations in connection with its investigations. Thus, the framers contemplated a power to issue statements other than indictments. **Conversations between the delegates also shed light on the proper subject matter of these recommendations.** During the debates over article I, section 8, Delegate Rivers explained that the grand jury's authority at the time of the Convention extended to the investigation of public officers and institutions. Rivers then asked Delegate Barr if he would agree to express the grand jury's authority as the power to "investigate public offices and institutions and make recommendations." Barr would not so consent. He stated that his amendment would grant a broader power than Rivers suggested. Barr's amendment would allow the grand jury to "make recommendations concerning other things than public offices and officers." By implication, **the framers intended, at the least, to grant the grand jury the power to issue recommendations concerning public offices and officers,** something which Barr maintained was the duty of the grand jury.

As noted above, a true report on conditions concerning public welfare can be beneficial in ensuring an effective government, even if it contains incidental criticism of a public official responsible for the conditions. Indeed, the framers of the Alaska Constitution considered this power sufficiently important to preserve it in the constitution. They viewed this power as necessary *"to protect the rights of... citizens."*

**If the prosecutor dominates the investigation, his own ambitions can lead to a one-sided investigation and presentation of evidence.** The prosecutor may initiate investigations into areas where there is no apparent corruption merely to harass certain officials or to guide the grand jury to a result he desires.

CONCLUSION The framers of the Alaska Constitution intended that the grand jury have the power to investigate and make recommendations on matters that concern the public welfare. They contemplated that such recommendations would contain criticism of public officials in limited circumstances.

#### APPENDIX: MINUTES OF THE PROCEEDINGS OF THE ALASKA CONSTITUTIONAL CONVENTION CONCERNING ARTICLE I, SECTION 8.

R. RIVERS: The present province of our grand jury is to investigate public offices and institutions, not just to investigate anything involving the public welfare. I wonder if Mr. Barr is intending to try to preserve what we already have now, as the province of the grand jury. Would you consent to having it worded as "investigate public offices and institutions and make recommendations"?

BARR: No. I think that their power should be a little broader than that. I don't know what the powers are right now exactly, but I do know that they make recommendations concerning other things than public offices and officers, and under this provision it would only investigate and make recommendations concerning things that endangered public welfare's safety, and I believe that is what the grand jury is for is to protect the rights of its citizens. They do not necessarily have to defame any person or mention him by name.



If the tax collector was using methods not acceptable to the public, they might make a recommendation for a change in the system of tax collection, etc., and I think it would be their duty to do so.

PRESIDENT EGAN: Is there further discussion of the proposed amendment to the amendment? Mr. Hellenthal.

HELLENTHAL: Mr. President, my suggestion was that the word "detrimental" be stricken and the word "involving" be inserted because I agree with Mr. Barr that the investigatory power of a grand jury is extremely broad, not as narrow as Mr. Rivers contends. I think a grand jury can investigate anything, and it is true that there is little protection against what they call in the vernacular, a runaway grand jury, but in the history of the United States there have been few runaway grand juries, extremely few, and I think that the broad statement of power that Mr. Barr asked for is proper and healthy.

PRESIDENT EGAN: Mr. Sundborg. [Vol. 3:295 1986]

SUNDBORG: Mr. President, I move and ask unanimous consent that the amendment to the amendment offered by Mr. Barr be amended by striking the words "detrimental to" in the second line and substituting therefore the word "involving."

BARR: I would like to submit the same amendment but using the word "involving" instead of "detrimental to" and I ask unanimous consent for its adoption.

JOHNSON: I second the motion.

PRESIDENT EGAN: Mr. Barr moves and Mr. Johnson seconds the motion. If there is no further discussion, the question is, "Shall the proposed amendment as offered by Mr. Barr to the amendment as amended be adopted by the Convention?" All those in favor of the adoption of the proposed amendment to the amendment as amended will signify by saying "aye," all opposed by saying "no." The "ayes" have it and the proposed amendment is ordered adopted.

Yeas: 44 - Armstrong, Awes, Barr, Boswell, Coghill, Cross, Davis, Emberg, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hinckel, Hurley, Johnson, Kilcher, King, Knight, Lee, Londborg, McCutcheon, McLaughlin, McNealy, McNees, Marston, Metcalf, Nerland, Nolan, Nordale, Peratrovich, Poulsen, Reader, R. Rivers, Robertson, Rosswog, Stewart, Sundborg, Sweeney, Taylor, VanderLeest, Walsh, White, Wien.

Nays: 8 - Buckalew, Doogan, H. Fischer, Laws, Riley, V. Rivers, Smith, Mr. President.  
Absent: 3 - Collins, Cooper, Hilscher.

### **United States v. R. Enterprises US Supreme Court 498 US 292 (1991)**

Unlike this Court, whose jurisdiction is predicated on a specific case or controversy, the grand jury *"can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not."* United States v. Morton Salt Co., 338 U.S.

632, 642 -643 (1950). The function of the grand jury is to inquire into all information that might possibly bear on its investigation until it has identified an offense or has satisfied itself that none has occurred. *"A grand jury investigation `is not fully carried out until every available clue has been run down and all witnesses examined in every proper way to find if a crime has been committed.'"* Branzburg v. Hayes, 408 U.S. 665, 701 (1972), quoting United States v. Stone, 429 F.2d 138, 140 (1970).

The teaching of the Court's decisions is clear: *A grand jury "may compel the production of evidence or the testimony of witnesses as it considers appropriate, and its operation generally is unrestrained by the technical procedural and evidentiary rules governing the conduct of criminal trials,"* id., at 343.

A grand jury need not accept on faith the self-serving assertions of those who may have committed criminal acts. Rather, it is entitled to determine for itself whether a crime has been committed. See Morton Salt Co., 338 U.S., at 642 -643.

### **Alaska Grand Jury Handbook, (Alaska Court System Form J-185)**

#### **[Page 16] Can a grand juror ask the grand jury to investigate a crime that the district attorney has not presented to them?**

Yes. The Alaska Statutes state: "If an individual grand juror knows or has reason to believe that a crime has been committed that is triable by the court, the juror shall disclose it to the other jurors, who shall investigate it."

#### **[Page 26] Who decides that the grand jury should investigate something?**

Generally, grand jury investigations are initiated by the district attorney. They can also be initiated by the presiding judge or by members of the grand jury. Prosecutors also sometimes receive letters from the public, addressed to the grand jury, requesting investigations. In these situations, the prosecutor will probably conduct a preliminary investigation and make a recommendation to the grand jury about whether to take action. It will be up to the grand jury to decide whether to investigate the matter requested in the letter.

**Turner, Michele**

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**From:** Blankenship, Johni  
**Sent:** Tuesday, January 18, 2022 11:18 AM  
**To:** Turner, Michele  
**Subject:** FW: <EXTERNAL-SENDER>Resolution 2022-004

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

From: Gerald <dogcraphorsecrap@yahoo.com>  
Sent: Tuesday, January 18, 2022 11:15 AM  
To: G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
Subject: <EXTERNAL-SENDER>Resolution 2022-004

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Hello,

I'd like this comment to be read to the assembly in the meeting on 01/18/2022 as my work schedule will not let me be in attendance. I support resolution 2022-004. I have experienced the corruption of law enforcement, the court system, and the Alaska Bar (lawyers). Please pass this resolution as a grand jury is the only way to catch and rid the current system of corruption. Police investigating police, judges investigating judges and lawyers is wrong and needs a check and balance from the citizens.

Thank you,

Gerald W. Miller

Sent from my iPhone



## Turner, Michele

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**From:** Blankenship, Johni  
**Sent:** Tuesday, January 18, 2022 11:18 AM  
**To:** Turner, Michele  
**Subject:** FW: <EXTERNAL-SENDER>Please disseminate to the assembly  
**Attachments:** 1-18-21 borough testimony.docx

### Public comment

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**From:** martyusak@me.com <martyusak@me.com>  
**Sent:** Tuesday, January 18, 2022 11:12 AM  
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Hello Johnni,  
Please disseminate my testimony in advance of the meeting tonight. I will be calling in through zoom to testify.

Thank you,  
Marty

### **ARROW** PRIVATE INVESTIGATIONS

Martin T. Anderson--Investigator  
907-252-7800  
[martyusak@me.com](mailto:martyusak@me.com)  
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*"Finding the truth, when others won't."*



This email has been checked for viruses by AVG antivirus software.  
[www.avg.com](http://www.avg.com)

Thank you, Mr. President and Assembly,

My name is Marty Anderson and I live at 36696 Kimball Court in Sterling, AK. I have been part of this community since August of 1981, graduating from Soldotna High School in 1982. I have been a member of this community for 41 years.

I graduated from UAA and have served as an adjunct at the local college and an adjunct instructor for more than 10 years at AVTEC in Seward Alaska. I have been a little league coach, a Sunday school teacher, adult church teacher, and mentor to hundreds of individuals. I have awarded more than \$500,000.00 in scholarships from my former technical school which I owned locally.

I have been the President of a local chamber of commerce, board member of KDLL Radio and the Peninsula Oilers. I served 15 years as an elected school board member of the Kenai Peninsula School District from 2003 to 2018 representing Sterling and Funny River.

I have served various other societies and boards locally, nationally, and internationally receiving mentor awards, instructor of the year and fellow awards.

I have served two former Alaska Governors, Palin and Parnell on the Alaska Workforce Development Board and serve our current Governor on the Alaska Oil and Gas Royalty Board. There is much more to my community service, but my time is limited tonight by protocol.

I speak today in support of this resolution before you. I have always been a staunch supporter of our police and our criminal justice system, so much so, as to be naïve that corruption exist in all things.

This past year, I have been the victim of falsified evidence by a public officer and unjust persecution. I spent well over \$100,000.00 protecting my innocence and my family suffered from what I believe was willful negligence, willful omission, and falsified evidence. Just a brief example, an affidavit was signed by a local police officer that listed my home located in two cities (Sterling and Soldotna/same street address) and he accused of an action I was alleged to have committed four months into the future (yes that is correct, he claimed I committed and act four months in the future) Both facts are physically impossible, yet a local judge signed

a search warrant based on this evidence and over 14 other false statements by the officer. Physical evidence clearly contradicts the officer's false statements.

More than a dozen local, state and federal former criminal justice employees such as prosecutors, district attorneys, homicide detectives, police intelligence officers and state troopers have reviewed the evidence I have been able to obtain, and their analyses reveals severe flaws and breaches of justice. I have made a FOIA and Alaska Public Records Request to local police but not all pertinent information has been willfully released. I filed a complaint with the Alaska Police Standards Council last month concerning the officer's conduct and hopefully his motives will also be closely examined. I am still waiting pertinent documents I have requested from local police which are being withheld from me.

After six months of a nightmare, I was not charged by the DA's office for any crimes but the pain and suffering my family and I endured should never be inflicted upon another innocent member of this community. We have serious local problems, as other communities in this country have with certain members of the criminal justice system. Let us be different and protect our citizens from those who should be protecting us. I ask the assembly tonight to pass this resolution and that it be a step closer to having an independent vehicle protecting us from those who should be protecting us but would willfully violate our trust and encroach upon inherit freedoms for self-serving motives.

Thank you, Mr. President, and assembly.



**Turner, Michele**

---

**From:** Blankenship, Johni  
**Sent:** Tuesday, January 18, 2022 12:36 PM  
**To:** Turner, Michele  
**Subject:** FW: <EXTERNAL-SENDER>Alaskans for an Independent Grand Jury

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

From: Tracey Earll <scrapqueen2010@hotmail.com>  
Sent: Tuesday, January 18, 2022 12:28 PM  
To: G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
Subject: <EXTERNAL-SENDER>Alaskans for an Independent Grand Jury

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

My name is Tracey Earll and unfortunately I can not attend tonight's meeting because I am out of state dealing with a family death. I want my opinion known on resolution 2022-004. I 100% support this resolutions and I hope that you vote what the people want. It appears Alaskas Judicial system may be corrupt to the very core. We need to restore accountability. I fully support the right of grand juries to investigate.

Tracey Earll  
907-398-1135  
46740 Gadwall Ave.  
Kenai, Alaska 99611

Sent from my iPhone

**Turner, Michele**

---

**From:** Blankenship, Johni  
**Sent:** Tuesday, January 18, 2022 12:37 PM  
**To:** Turner, Michele  
**Subject:** FW: <EXTERNAL-SENDER>Resolution 2022-004

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

From: Tracey Earll <scrapqueen2010@hotmail.com>  
Sent: Tuesday, January 18, 2022 12:28 PM  
To: G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
Subject: <EXTERNAL-SENDER>Resolution 2022-004

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

I am sending this email so that my voice can be heard. I am currently out of state because a death in the family and can't attend the meeting tonight. I 100% support this resolution. It appears that Alaska's judicial system may be corrupt to the very core. We need to restore accountability and equality for all Alaskans. I support the right of an Independent grand jury to investigate.

I hope you will vote for what the people want and to keep Alaskans rights.  
It may be one of you next time that is railroaded with the injustice's on a corrupt system.  
Think about that when you place your vote.

Thank you

Tracey Earll  
907-398-1135  
46740 Gadwall Ave  
Kenai, Alaska 99611  
Sent from my iPhone

**Turner, Michele**

---

**From:** Blankenship, Johni  
**Sent:** Tuesday, January 18, 2022 4:24 PM  
**To:** Turner, Michele  
**Subject:** FW: <EXTERNAL-SENDER>Resolution 2022-004

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

From: Pattie <quilting@eaglesroost.us>  
Sent: Tuesday, January 18, 2022 4:06 PM  
To: G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
Subject: <EXTERNAL-SENDER>Resolution 2022-004

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

The referenced Resolution is quite concerning to me and I would like to request that this be passed.

Thank you,  
P. A. Wright

Ak. Resident 55 years, Kenai Peninsula Resident 28 years.

Sent from my iPhone



eComment  
Resolution 2022-004

**Garrett Ennis**

Location:

Submitted At: 6:18pm 01-17-22


I am in support of agenda item 2022-004. David Haeg has provided evidence that shows that a Grand Jury was prevented from investigating the very judge who is in charge of investigating judicial corruption. This is tantamount to the proverbial "fox guarding the henhouse." David has provided over 500 petitions by Alaskans wanting a Grand Jury to investigate judicial corruption. If we are to have any faith in our institutions of law and order then it is paramount that Grand Juries be given the opportunity to investigate crimes or even credible reasons that a crime may have been committed by the very institutions entrusted with safeguarding law and order. It is the duty as outlined in the Alaskan Constitution for a Grand Jury to investigate crimes and that should never be abrogated or neglected as it is one measure the citizens have against institutional corruption.

## Kenai Peninsula Borough Assembly

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### MEMORANDUM

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

**FROM:** Jess Bjorkman, Assembly Member   
Bill Elam, Assembly Member *BE*

**DATE:** December 21, 2021

**RE:** Resolution 2022-004, Supporting the Constitutional Right of Alaska Grand Juries to Investigate and Make Recommendations on Public Welfare and Safety Concerns (Bjorkman, Elam)

---

Whether accused or complainant, when Alaskans appear in our courtrooms around the state they deserve fair and impartial justice. In recent years concerns have been brought forward by Kenai Peninsula Borough residents about our court system. We believe that this resolution provides a path to improve the accountability and transparency of the judicial system and its officers.

Without judgment as to the merits of these complaints, we believe the remedy to situations like these is a constitutional one. As stated in Article 1 Sec 8 of the Alaska Constitution: "The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended". In the extraordinary instance in which there are meritorious claims made against officers of the court, we believe grand juries must be allowed to impartially look at the evidence and make a recommendation as to next steps.

This resolution encourages the State of Alaska to implement a constitutionally compliant system of accountability, transparency, and trust in our judicial system. This system places accountability in the hands of the law and not one person at one moment in time.

Thank you for your consideration.

**From:** Robert Nicholai <agyeakn@gmail.com>  
**Sent:** Sunday, January 2, 2022 11:24 PM  
**To:** G\_Notify\_AssemblyClerk; Alapak Moore  
**Subject:** <EXTERNAL-SENDER>Fwd: Meant to be Federally Recognized Tribes  
**Attachments:** 20211226\_122454.jpg

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

I support the January 4, 2022 Resolution for a Grand Jury to investigate government corruption in Alaska,. Agiyak aka Robert Nicholson Jr from Ingritsauk aka Twin Hills Alaska

----- Forwarded message -----

**From:** Robert Nicholai <[agyeakn@gmail.com](mailto:agyeakn@gmail.com)>  
**Date:** Sun, Jan 2, 2022, 12:02 PM  
**Subject:** Meant to be Federally Recognized Tribes  
**To:** Alapak Moore <[alapak@hotmail.com](mailto:alapak@hotmail.com)>



## **THIS IS HOW FEDERALLY RECOGNIZE TRIBES MEANT TO BE "BETRAY ELDERS SIGNATURES"**

Some Indigenous Yup'ik Peoples and others who do not really know, understand, care, are misinformed and misguided about the fundamental, inalienable Indigenous Human Rights and the Allodial Titles to lands, Waters and Resources are speaking out on these topics and are encouraging other Yup'iks not to get involved, support or embrace the work of the KCE Members Yup'ik Peoples. These individuals, whether they are doing it knowingly or purposely have become federal and state agents who are maintaining and furthering the violations of the fundamental, inalienable Indigenous Yup'ik Human Rights which began with the 1867 Treaty of Cessions Fraud and Lies. They are working to prevent and stop the Indigenous Yup'ik Peoples from exercising their Inherent Yup'ik Rights to examine, review and decide, officially and legally whether to consent to or reject the actions and decisions of the federal and state governments. They are using their misguided beliefs and fears to implant and impose the same realities to other Indigenous Yup'ik Peoples. They are using local and statewide Native organizations and federal sub-governments and funds to inform and organize their fights to stop the Indigenous Yup'ik Peoples and the Traditional Yupiaq Governments from taking back the control of their Rights, Villages, Lands, Waters and Resources.

The Traditional Yupiaq Governments and the Indigenous Yup'ik Peoples can not have anyone else speak, represent and make decisions for them on the fundamental, inalienable Inherent Yup'ik Human Rights, the Traditional Yupiaq Governments and our Allodial Titles to our Lands, Waters and Resources. Because this is the most important work that the Indigenous Yup'ik Peoples and their Villages have ever worked on since the foreigners from Russia and European came the Traditional Yupiaq Governments and the Indigenous Yup'ik Peoples must work together in a way that our Ancestors successfully did by using the Kasgit Form of Governance. Using any other way or forms would instantly compromise and diminish our Inherent Sovereign Rights and Powers without even giving our Indigenous Yup'ik Peoples the opportunity to decide, officially and legally, whether to utilize, what was passed on to them by our ancestors.

**From:** Walter Kuku <walterkuku1957@gmail.com>  
**Sent:** Sunday, January 2, 2022 10:40 PM  
**To:** G\_Notify\_AssemblyClerk  
**Subject:** <EXTERNAL-SENDER>

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

I support the January 4 2022 Resolution for a grand jury to investigate government corruption in Alaska

Tsagak walter kuku  
Ingritsuak ala Twin Hills

**From:** Robert Nicholai <agyeakn@gmail.com>  
**Sent:** Sunday, January 2, 2022 10:16 PM  
**To:** Alapak Moore; G\_Notify\_AssemblyClerk  
**Subject:** <EXTERNAL-SENDER>Re: Meant to be Federally Recognized Tribes

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

I support the January 4, 2022 Resolution for a Grand Jury to investigate government corruption in Alaska

On Sun, Jan 2, 2022, 4:22 PM Alapak Moore <[alapak@hotmail.com](mailto:alapak@hotmail.com)> wrote:

Can you pls email Rose  
Grassroots local AK effort. Please help TODAY by  
copy & paste and email to:

[assemblyclerk@kpb.us](mailto:assemblyclerk@kpb.us)

"I support the January 4, 2022 Resolution for a Grand Jury to investigate government corruption in Alaska."

Name  
Where from

Tell tssgak n others  
Sent from my Galaxy

----- Original message -----

From: Robert Nicholai <[agyeakn@gmail.com](mailto:agyeakn@gmail.com)>  
Date: 1/2/22 11:56 AM (GMT-09:00)  
To: Alapak Moore <[alapak@hotmail.com](mailto:alapak@hotmail.com)>  
Subject: Meant to be Federally Recognized Tribes



**From:** colleen.bagot <colleen.bagot@yahoo.com>  
**Sent:** Sunday, January 2, 2022 10:03 PM  
**To:** G\_Notify\_AssemblyClerk  
**Subject:** <EXTERNAL-SENDER> Notice

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

[Sent from Yahoo Mail for iPhone](#)

On Sunday, January 2, 2022, 3:09 PM, MAILER-DAEMON@yahoo.com wrote:

Sorry, we were unable to deliver your message to the following address.

<[assemblyclerk@kps.us](mailto:assemblyclerk@kps.us)>:

Unable to deliver message after multiple retries, giving up.

----- Forwarded message -----

I support the 1-4-22 Resolution to have a grand jury investigate the corruption of State of Alaska governments

Colleen Ferris-Bagot  
Palmer, Alaska

[Sent from Yahoo Mail for iPhone](#)

---

**From:** Patti Moss <pattimoss13@gmail.com>  
**Sent:** Sunday, January 2, 2022 9:46 PM  
**To:** G\_Notify\_AssemblyClerk  
**Subject:** <EXTERNAL-SENDER>Re: Government corruption

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

I support the January 4, 2022 Resolution for a Grand Jury to investigate government corruption in Alaska.

Patti Pyles  
Fairbanks, Alaska

**From:** Rachel Pugh <shebirth@gmail.com>  
**Sent:** Sunday, January 2, 2022 5:36 PM  
**To:** G\_Notify\_AssemblyClerk  
**Subject:** <EXTERNAL-SENDER>Support the resolution to investigate government corruption in Alaska

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

"I support the January 4, 2022 Resolution for a Grand Jury to investigate government corruption in Alaska."

Rachel Pugh, Eagle River, AK  
(907) 691-5991

**From:** Alapak Moore <alapak@hotmail.com>  
**Sent:** Sunday, January 2, 2022 4:21 PM  
**To:** G\_Notify\_AssemblyClerk  
**Subject:** <EXTERNAL-SENDER>

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

"I support the January 4, 2022 Resolution for a Grand Jury to investigate government corruption in Alaska."

Eleanor R moore  
Manokotak. Ak

Sent from my Galaxy



**From:** Donald Thompson <dc.thom@hotmail.com>  
**Sent:** Sunday, January 2, 2022 3:36 PM  
**To:** G\_Notify\_AssemblyClerk  
**Subject:** <EXTERNAL-SENDER>Corruption

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

"I support the January 4, 2022 Resolution for a Grand Jury to investigate government corruption in Alaska."

Donald Thompson  
Fairbanks AK 99712

Get [Outlook for Android](#)

**From:** Ginger McKenzie <ginstock@yahoo.com>  
**Sent:** Sunday, January 2, 2022 3:35 PM  
**To:** G\_Notify\_AssemblyClerk  
**Subject:** <EXTERNAL-SENDER>Govt corruption investigation

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

I absolutely support the January 4, 2022 Resolution for a Grand Jury to investigate government corruption in Alaska.

Ginger McKenzie  
Fairbanks

Sent from my iPhone

**From:** Rachael Stark <r.stark@cmiak.com>  
**Sent:** Sunday, January 2, 2022 3:14 PM  
**To:** G\_Notify\_AssemblyClerk  
**Subject:** <EXTERNAL-SENDER> Investigate government corruption in Alaska

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

I support the January 4, 2022 Resolution for a Grand Jury to investigate government corruption in Alaska.

Rachael Stark  
Fairbanks Alaska

Sent from my iPhone

The content of this email is confidential and intended for the recipient specified in message. Please do not share this message without the consent of the sender.

**From:** leifeilie <leifeilie@gmail.com>  
**Sent:** Sunday, January 2, 2022 2:49 PM  
**To:** G\_Notify\_AssemblyClerk  
**Subject:** <EXTERNAL-SENDER>Local AK Effort

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

"I support the January 4, 2022 Resolution for a Grand Jury to investigate government corruption in Alaska."

Jamie Bassett  
1217 Wild Rose Ave  
Fairbanks, Alaska 99701

Sent via the Samsung Galaxy S21 Ultra 5G, an AT&T 5G smartphone



**From:** Tiffany Damota <t.damotasupplee@gmail.com>  
**Sent:** Sunday, January 2, 2022 2:35 PM  
**To:** G\_Notify\_AssemblyClerk  
**Subject:** <EXTERNAL-SENDER>I support The resolution!

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

I want an investigation NOW.

"I support the January 4, 2022 Resolution for a Grand Jury to investigate government corruption in Alaska."

Tiffany Supplee  
From Fairbanks

Sent from my iPhone

**From:** Roxanne Lester <drlester5@hotmail.com>  
**Sent:** Sunday, January 2, 2022 2:21 PM  
**To:** G\_Notify\_AssemblyClerk  
**Subject:** <EXTERNAL-SENDER>Grand Jury Investigation

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

I support the January 4, 2022 Resolution for a Grand Jury to investigate government corruption in Alaska.

Roxanne Lester  
Fairbanks, Alaska

Sent from my Verizon, Samsung Galaxy smartphone

**From:** Kim Elgee <kimelgee9@gmail.com>  
**Sent:** Sunday, January 2, 2022 1:57 PM  
**To:** G\_Notify\_AssemblyClerk  
**Subject:** <EXTERNAL-SENDER>Grand jury investigation

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

"I support the January 4, 2022 Resolution for a Grand Jury to investigate government corruption in Alaska."

Name. Kim Elgee

Where from. Wasilla Alaska  
P.O. Box 872242 Wasilla Alaska 99687  
907-521-0229

**From:** eli Jackson <elijackson44@yahoo.com>  
**Sent:** Sunday, January 2, 2022 1:27 PM  
**To:** G\_Notify\_AssemblyClerk  
**Subject:** <EXTERNAL-SENDER>

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

Henryl support the January 4, 2022 Resolution for a Grand Jury to investigate government corruption in Alaska."

Ben and Daisy Henry, Kiana, Alaska



**From:** bruce walden <brucewalden1962@yahoo.com>  
**Sent:** Friday, December 31, 2021 12:37 PM  
**To:** G\_Notify\_AssemblyClerk  
**Subject:** <EXTERNAL-SENDER>Alaskan Governmental Corruption Investigation

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

Honorable Members,

It is time to expose the corruption in Alaskan politics. It has affected us all and has ruined/alterd the lives of may. I wholeheartedly support the January 4, 2022 Resolution for a Grand Jury to investigate government corruption in Alaska. The time is now, not later.

Sincerest Regards,

Bruce Walden

Palmer, Alaska

## Blankenship, Johni

---

**From:** Tammy Fairbanks <fairbanks.t86@gmail.com>  
**Sent:** Monday, January 3, 2022 9:41 PM  
**To:** G\_Notify\_AssemblyClerk  
**Subject:** <EXTERNAL-SENDER>

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

"I support the January 4, 2022 Resolution for a Grand Jury to investigate government corruption in Alaska." Tammy Fairbanks Anchorage Alaska

## Blankenship, Johni

---

**From:** Holly Sheldon Lee <hollysheldonlee5g@gmail.com>  
**Sent:** Monday, January 3, 2022 11:38 PM  
**To:** G\_Notify\_AssemblyClerk  
**Cc:** info@sheldonairservice.com  
**Subject:** <EXTERNAL-SENDER>Support for Resolution Jan 4, 2022

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

We the undersigned support the January 4, 2022 Kenai Peninsula Borough Assembly Resolution for a Grand Jury to investigate government corruption in Alaska. This is a Statewide issue and we appreciate your local effort.

Jesse P Szmyd, Fairbanks • Alaska

Tammy Tebbits, Noorvik • Alaska

Holly Sheldon Lee, Talkeetna • Alaska

## Blankenship, Johni

---

**From:** Aileen Cotter <acotter1954@yahoo.com>  
**Sent:** Tuesday, January 4, 2022 8:34 AM  
**To:** G\_Notify\_AssemblyClerk  
**Subject:** <EXTERNAL-SENDER>Investigation

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

"I support the January 4, 2022 Resolution for a Grand Jury to investigate government corruption in Alaska."

Ella Cotter  
North Pole, Alaska

Sent from my iPhone



Introduced by:	Mayor
Date:	01/04/22
Hearing:	01/18/22
Action:	Failed to Enact
Vote:	1 Yes, 7 No, 1 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2021-19-33**

**AN ORDINANCE APPROPRIATING ADDITIONAL FUNDS TO SUPPORT RESULTS  
OF THE NIKISKI SENIOR SERVICE AREA FY2020 AND FY2021 DUE DILIGENCE  
AUDIT OR REVIEW COST PROPOSAL**

**WHEREAS,** during the FY2022 annual budgetary process, \$10,000 was appropriated from the Nikiski Senior Service Area Fund Balance to provide general due diligence in connection with the current Operating Agreement between Nikiski Senior Citizens, Inc. and the Kenai Peninsula Borough Nikiski Senior Service Area; and

**WHEREAS,** the proposals have been received and the successful bidder's cost is \$5,000 higher than the original appropriation of \$10,000; and

**WHEREAS,** this ordinance appropriates an additional \$5,000 from the Nikiski Senior Service Area Fund Balance to support the services; and

**WHEREAS,** on December 13, 2021, the Nikiski Senior Service Area Board was notified and provided the opportunity to comment on the outcome that bids came in higher than originally anticipated and that additional funds would need to be appropriated;

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

**SECTION 1.** That the amount of \$5,000 is appropriated from the Nikiski Senior Service Fund fund balance account number 280.27910 to account number 280.63190.43012 for operating agreement financial due diligence services.

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

**SECTION 3.** This ordinance shall become effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 18TH DAY OF JANUARY, 2022.**

\_\_\_\_\_  
Brent Johnson, Assembly President

ATTEST:

\_\_\_\_\_  
Johni Blankenship, MMC, Borough Clerk

Yes: Bjorkman, Chesley, Cox, Derkevorkian, Ecklund, Tupper, Johnson  
No: Elam  
Absent: Hibbert

# Kenai Peninsula Borough

## Finance

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### MEMORANDUM

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

**THRU:** Charlie Pierce, Mayor *CP*

**FROM:** Brandi Harbaugh, Finance Director *BH*

**DATE:** December 22, 2021

**SUBJECT:** Ordinance 2021-19-33, Appropriating Additional Funds to Support Results of the Nikiski Senior Service Area FY2020 and FY2021 Due Diligence Audit or Review Cost Proposal (Mayor)

---

During the FY2022 annual budgetary process, \$10,000 was appropriated from the Nikiski Senior Service Area Fund Balance to provide for a standard due diligence independent audit of financial compliance with the Operating Agreement between Nikiski Senior Citizens, Inc. and the KPB Nikiski Senior Service Area, use of Service Area and KPB Senior Grant funds, as well as a written report and presentation to the KPB Assembly. The KPB is requesting this service to accomplish general due diligence in connection with the current Operating Agreement.

The proposals have been received and the successful bidder's cost is \$5,000 higher than the original appropriation of \$10,000. Therefore, in order to award the entire engagement, \$5,000 in additional funds is requested. This Ordinance appropriates an additional \$5,000 from the Nikiski Senior Service Area Fund Balance.

FINANCE DEPARTMENT ACCOUNT / FUNDS VERIFIED	
Acct. No.	<u>280.27910</u>
Amount:	<u>\$5,000.00</u>
By: <i>CP</i>	Date: <u>12/16/2021</u>

**Turner, Michele**

---

**Subject:**

FW: Ord 2021-19-33 "Due Diligence" Audit for Nikiski Senior Center Inc.

**From:** "Bjorkman, Jesse" <JBjorkman@kpb.us>

**Date:** January 14, 2022 at 2:01:38 PM AKST

**To:** debakk@gci.net, indy\_92@yahoo.com, granny.jeanak@gmail.com, smokeross@alaska.net, eaglewing86@gci.net, janets6@yahoo.com, wayne.ogle@yahoo.com, julieware0601@gmail.com, hartlines@hotmail.com, rtauri@gci.net, lois.solmonson@gmail.com, sasha@nikiskiseniorcenter.com, sue@nikiskiseniorcenter.com, "Pierce, Charlie" <CPierce@kpb.us>, "Rhoades, Aaron" <arhoades@kpb.us>, "Harbaugh, Brandi" <BHarbaugh@kpb.us>, "Johnson, Brent" <bjohnson@kpb.us>

**Subject:** Ord 2021-19-33 "Due Diligence" Audit for Nikiski Senior Center Inc.

Included in this email are the members of the NSSA Board, NSC Inc. Board, NSC Director and book keeper, Borough Mayor, COS, Finance Director, and Assembly President

Hello Neighbors,

At the next Kenai Peninsula Borough Assembly meeting on January 18th an additional appropriation for \$5,000 from the NSSA fund balance is on the agenda. Ordinance 2021-19-33 is entitled "An Ordinance Appropriating additional Funds to Support Results of the Nikiski Senior Service Area FY2020 and FY2021 Due Diligence Audit or Review Cost Proposal".

I have some concerns with the request for an additional audit at this time and under these circumstances.

I am unaware of any specific triggers that exist in policy or past practice of the NSSA or NSC Inc. that require an audit of this type. If there are such, I would be glad to know of them.

When I spoke to finance director Harbaugh on 1/3/22 about this issue, she told me that an audit of this type had not been preformed since 2009 and that an expenditure of \$15,000 was a reasonable expense every ten years. However, at the Assembly meeting the following day it was revealed that a similar audit had been preformed in 2017. Also, in conversations with Ms. Harbaugh and in front of the Assembly she stated that she had no specific concerns about the finances of the NSSA or Nikiski Senior Citizens Inc. If there is to be an audit of this type in the future, I suggest that it be done on a predictable schedule which is stated in the operating agreement and at a time of the year when it is most convenient for the NSC Inc. staff. The request for this audit at this time is neither predictably scheduled nor is it manageable considering the time of year.

One of the whereas clauses in the ordinance 2021-19-33 states that the NSSA Board was provided the opportunity to comment on the increased expenditure request on Dec 13, 2021. I heard from at least one NSSA board member that this conversation did not



seem like an opportunity to comment in an official capacity as an advisory board. If that was the case, it is customary that a Service Area Board recommendation appear in an ordinance of this type - there is none provided. Instead, a message was delivered to the service area board at the meeting on 12/13 that this audit was inevitable and had to be done. If this recharacterization of what happened at that meeting is incorrect please let me know. If it is correct summary, then I have additional concerns as the inclusion of this particular whereas seems to imply tacit consent of the NSSA board in favor of the additional expenditure and the audit. From everything that I have heard from NSSA board members, the board is not in favor of this type of audit at this time and the insinuation that that is in favor of the audit would be an anathema to the public process.

A good solution to any tension between the practice of the NSC Inc and the operating agreement between NSC Inc and the KPB, if any exists at all, is likely due to the fact that the operating agreement has grown stale over three decades and needs to be refreshed to a standard that best enables excellent services to be delivered to Nikiski's Seniors. The review of this agreement should take place in the coming months. Also, if a compliance audit is needed to assure adherence to the operating agreement between NSC Inc. and the KPB the schedule of those audits should be laid out in the operating agreement.

For those that prefer a list of bullet points:

1. As stated by the KPB finance department, the request for this audit was not triggered by misfeasance or malfeasance.
2. The NSSA board feels they were not given the opportunity to support or not support the KPB administration's request for this audit.
3. With no credible allegations against NSC Inc or the NSSA Board, members of those boards feel that the KPB administration should provide less costly alternatives.
4. Clear financial reporting policies need to be put in place in the NSC Inc operating agreement that would meet the KPB financial "transparency" standards.

For these reasons, I will not support the additional expenditure of \$5,000 as requested by KPB administration unless presented with overwhelming evidence about why I and the rest of the the Assembly should support the audit at this time. The discrepancies and deviations have been dealt with as a result of the audit in 2017 as well as multiple ongoing annual audits and conversations at NSSA board meetings with the finance department.

Its time to put policies in place that avoid ad hoc action and give the staff at the NSC predictability, guidance, and support instead of accusations.

Have a great day,  
Jesse J Bjorkman

Introduced by:	Mayor
Date:	01/04/22
Hearing:	01/18/22
Action:	Enacted
Vote:	8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-01**

**AN ORDINANCE AUTHORIZING A COMMUNICATIONS SITE LEASE  
AGREEMENT WITH VERTICAL BRIDGE S3 ASSETS, LLC AT NIKISKI FIRE  
STATION 1**

**WHEREAS,** in 2000, permission was granted to Vertical Bridge S3 Assets, LLC's predecessor to construct and maintain a 120' self-supporting communications tower and a 10' x 20' support building at Nikiski Fire Station 1; and

**WHEREAS,** the tower site permit has been maintained in good standing and a long-term agreement is desired to continue operating this site and supporting communication needs in Nikiski; and

**WHEREAS,** a communication site lease agreement has been negotiated in standard form and in consideration of the interests of the Nikiski Fire Service Area; and

**WHEREAS,** the site was purchased with North Kenai Fire Service Area funds in 1971 in accordance with KPB Ordinance 71-22; and

**WHEREAS,** the Nikiski Fire Service Area Board at its regularly scheduled meeting of January 12, 2022 recommended approval by unanimous consent; and

**WHEREAS,** the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of January 10, 2022 recommended approval by unanimous consent.

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

**SECTION 1.** That the assembly finds that entering into a Communications Site Lease Agreement with Vertical Bridge S3 Assets, LLC, pursuant to KPB 17.10.100(I), authorizing the negotiated lease of borough lands, is in the best interest of the borough at the following location:

Lot 2, Redoubt Highway Subdivision of Tract 2, according to Plat No. 1549, Kenai Recording District, Third Judicial District, State of Alaska (Parcel No. 017-260-50)

This finding is based on the following facts:

1. The borough will receive a fair market rent for the term of the lease.

2. That the communication improvements are compatible with the site.
3. That the borough reserves a benefit of tower space for emergency communication equipment in the lease.

**SECTION 2.** That the provisions of KPB 17.10.080-.090 and KPB 17.10.110-.240 governing classification, disposition, and leasing of borough lands and related natural resources shall not apply to this communications site lease.

**SECTION 3.** Based on the foregoing, the mayor is hereby authorized pursuant to KPB 17.10.100(I) to negotiate and enter into a Communication Site Lease Agreement upon a portion of the property identified in Section 1. The authorization is for lease solely to Vertical Bridge S3 Assets, LLC, and it may not assign any rights to negotiate or enter into an agreement for lease to any other person or entity.

**SECTION 4.** The mayor is authorized to execute an agreement under terms and conditions similar to the Communications Site Lease Agreement provided to the assembly for reference and review.

**SECTION 5.** Vertical Bridge S3 Assets, LLC shall have 120 days from the date of enactment of this ordinance to execute the agreement.

**SECTION 6.** That rent revenue from the subject lease shall be submitted to the Borough Finance Department and deposited in the Nikiski Fire Service Area account 206.00000.00000.36316.

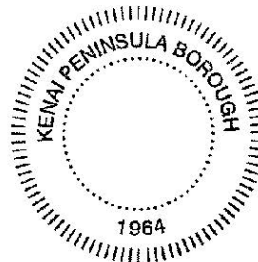
**SECTION 7.** That this ordinance is effective immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 18TH DAY OF JANUARY, 2022.**

  
Brent Johnson, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



Yes: Bjorkman, Chesley, Cox, Derkevorkian, Ecklund, Elam, Tupper, Johnson  
No: None  
Absent: Hibbert

# Kenai Peninsula Borough

## Planning Department – Land Management Division

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### MEMORANDUM

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

**THRU:** Charlie Pierce, Mayor   
Melanie Aeschliman, Planning Director   
Marcus Mueller, Land Management Officer 

**FROM:** Julie Denison, Land Management Technician 

**DATE:** December 22, 2021

**RE:** Ordinance 2022-81, Authorizing A Communication Tower Agreement with Vertical Bridge S3 Assets, LLC at Nikiski Fire Station 1 (Mayor)

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Vertical Bridge S3 Assets, LLC owns and operates a 120' wireless communications tower at Nikiski Fire Station 1. The tower was constructed in 2000 and authorized under a land use permit for the purpose of providing wireless communication services. The land use permit is in good standing and Vertical Bridge S3 Assets, LLC has requested to enter into a lease.

A Communications Site Lease Agreement has been negotiated using standard practices for the parcel acquired by the Nikiski Fire Service Area. The benefits of the lease would go to the service area. The service area board will provide its recommendations to the assembly prior to public hearing on this ordinance.

The planning commission will hold a public hearing on this item at its regularly scheduling meeting on January 10, 2022 and provide its recommendations prior to the January 18<sup>th</sup> assembly meeting.

Your consideration of this ordinance is appreciated.



Kenai Peninsula Borough  
Office of the Borough Clerk

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**MEMORANDUM**

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

**THRU:** Johni Blankenship, Borough Clerk (JB)

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

**DATE:** January 14, 2022

**RE:** Ordinance 2022-01: Authorizing A Communication Tower Agreement with Vertical Bridge S3 Assets, LLC at Nikiski Fire Station 1 (Mayor)

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

Conforming to the advisory boards' actions, the last two Whereas clauses have been updated to read:

**"WHEREAS,** the Nikiski Fire Service Area Board at its regularly scheduled meeting of January 12, 2022 recommended approval by unanimous consent; and

**WHEREAS,** the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of January 10, 2022 recommended approval by unanimous consent."

Thank you.

## Turner, Michele

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**From:** Blankenship, Johni  
**Sent:** Thursday, January 13, 2022 10:07 AM  
**To:** Turner, Michele  
**Subject:** FW: PC Recommendation for Ordinance 2022-01

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**From:** Shirnberg, Ann  
**Sent:** Tuesday, January 11, 2022 9:26 AM  
**To:** Blankenship, Johni <JBlankenship@kpb.us>; 'Mary Toll' <mtoll@kenai.city>  
**Subject:** PC Recommendation for Ordinance 2022-01

Good Morning Michele,

The Planning Commission reviewed the follow ordinance at their regular January 10, 2022 meeting and recommended approval by unanimous vote (6-Yes, 2-Absent, 5-Vacant):

Ordinance 2022-01: An ordinance authorizing a communications site lease agreement with Vertical Bridge S3, LLC at Nikiski Fire Station 1.

Thank You,

Ann Shirnberg  
Administrative Assistant  
Planning Department  
(907) 714-2215

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 public upon request.

## Turner, Michele

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**From:** Blankenship, Johni  
**Sent:** Thursday, January 13, 2022 1:18 PM  
**To:** Turner, Michele  
**Subject:** FW: Communication Site Lease Agreement

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**From:** Burnett, Trent  
**Sent:** Thursday, January 13, 2022 12:00 PM  
**To:** Blankenship, Johni <JBlankenship@kpb.us>  
**Cc:** Mueller, Marcus <MMueller@kpb.us>  
**Subject:** Communication Site Lease Agreement

Johni,

Last night at our regularly scheduled board meeting, the board approved the communication lease agreement that was presented by Marcus Mueller.

Below is the motion and approval by the board:

"MOTION BY TODD PAXTON TO RECOMMEND THE APPROVAL OF THE COMMUNICATION SITE LEASE AGREEMENT AT STATION #1. SECONDED BY AMBER OLIVA-DOUGLAS.

NO OBJECTION BY NFSA BOARD."

Please let me know if you need anything further.

Thank you,

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

# Nikiski Fire Station #1 W/ Communication Tower Site



Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geodatastyrelsen, Rijkswaterstaat, GSA, Geoland, FEMA, Intermap and the GIS user community, Sources: Esri, HERE, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community

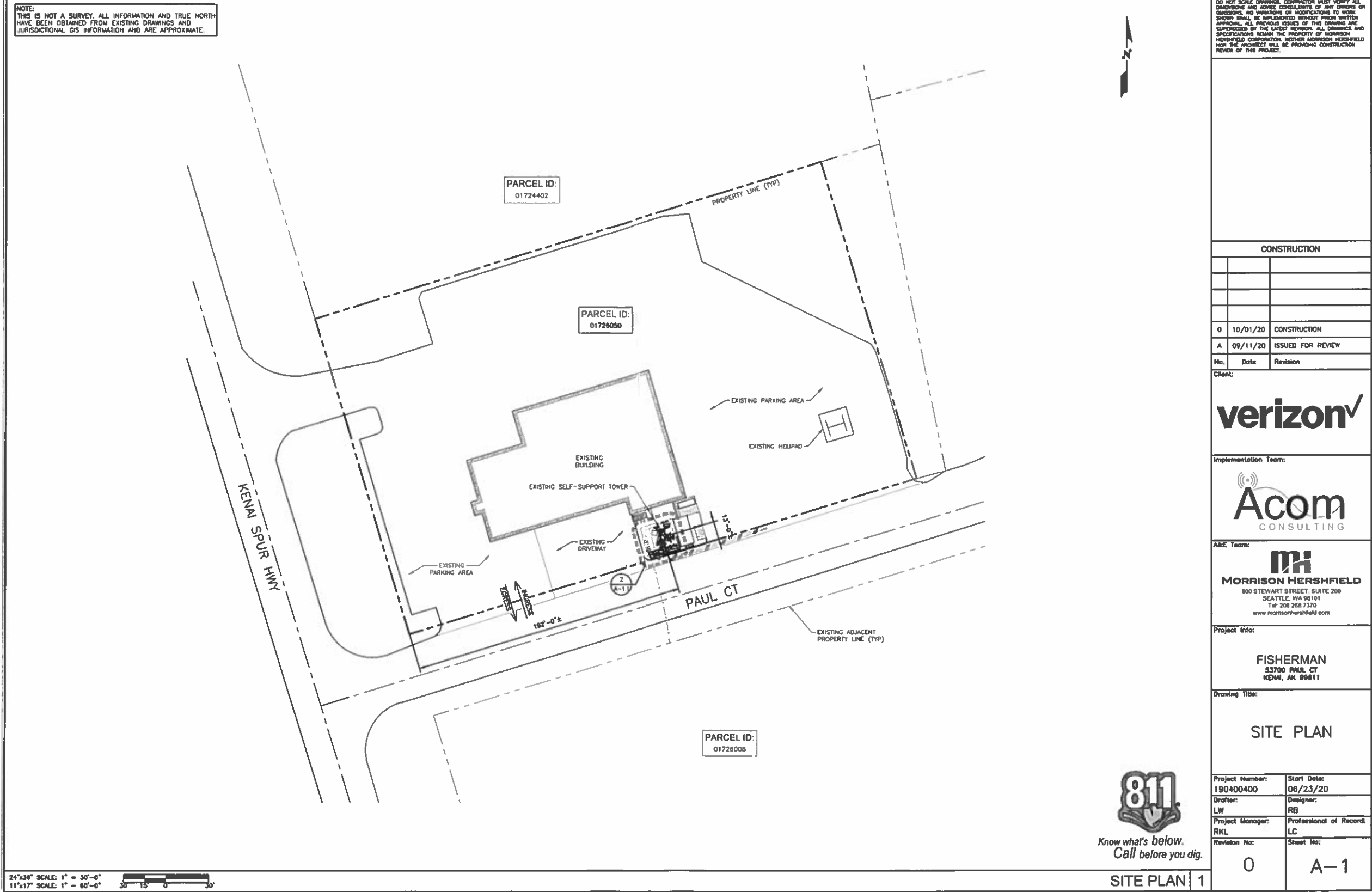
44800 KENAI SPUR HWY

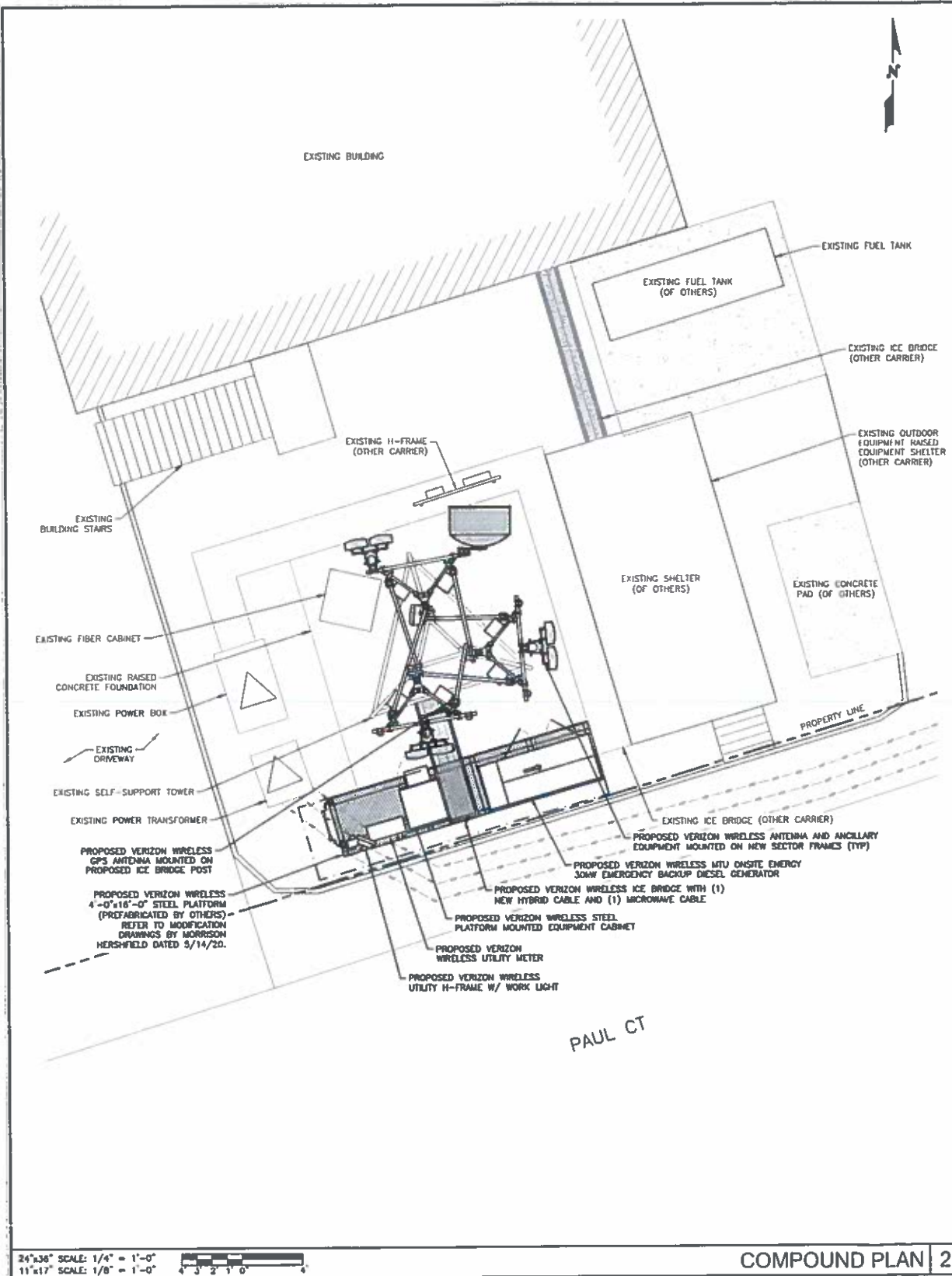
0 250 500 1,000 Feet



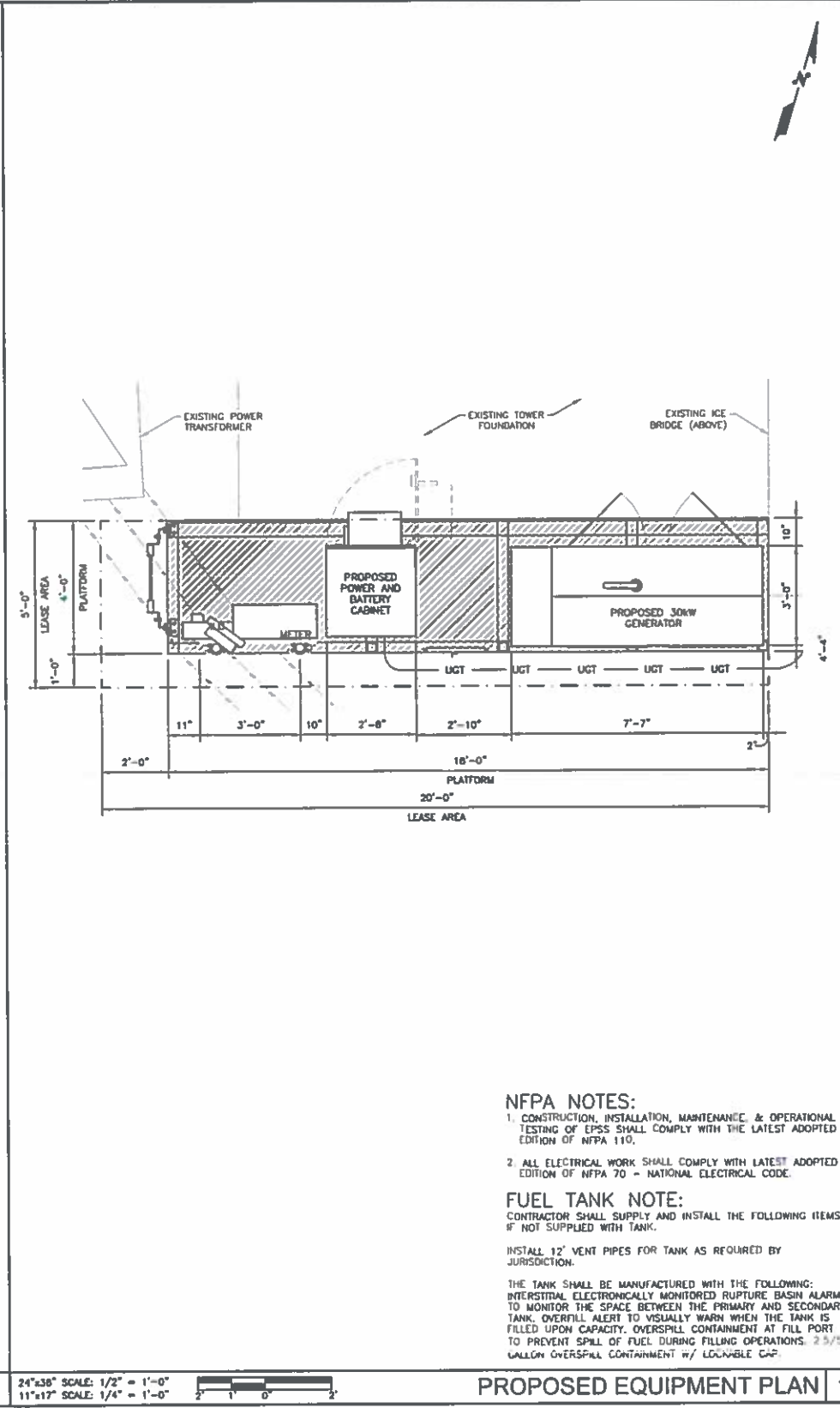








COMPOUND PLAN 2



PROPOSED EQUIPMENT PLAN 1

**NFPA NOTES:**

1. CONSTRUCTION, INSTALLATION, MAINTENANCE, & OPERATIONAL TESTING OF EPSS SHALL COMPLY WITH THE LATEST ADOPTED EDITION OF NFPA 110.
2. ALL ELECTRICAL WORK SHALL COMPLY WITH LATEST ADOPTED EDITION OF NFPA 70 - NATIONAL ELECTRICAL CODE.

**FUEL TANK NOTE:**

CONTRACTOR SHALL SUPPLY AND INSTALL THE FOLLOWING ITEMS IF NOT SUPPLIED WITH TANK.

INSTALL 12" VENT PIPES FOR TANK AS REQUIRED BY JURISDICTION.

THE TANK SHALL BE MANUFACTURED WITH THE FOLLOWING: INTERSTITIAL ELECTRONICALLY MONITORED RUPTURE BASIN ALARM TO MONITOR THE SPACE BETWEEN THE PRIMARY AND SECONDARY TANK. OVERFILL ALERT TO VISUALLY WARN WHEN THE TANK IS FILLED UPON CAPACITY. OVERSPILL CONTAINMENT AT FILL PORT TO PREVENT SPILL OF FUEL DURING FILLING OPERATIONS. 2 5/8 GALLON OVERSPILL CONTAINMENT w/ LOUVERABLE CAP.

DO NOT SCALE DRAWINGS. CONTRACTOR MUST VERIFY ALL DIMENSIONS AND ADVISE CONSULTANTS OF ANY ERRORS OR OMISSIONS. NO VARIATIONS OR MODIFICATIONS TO WORK SHOWN SHALL BE IMPLEMENTED WITHOUT PRIOR WRITTEN APPROVAL. ALL PREVIOUS ISSUES OF THIS DRAWING ARE SUPERSEDED BY THE LATEST REVISION. ALL DIMENSIONS AND SPECIFICATIONS REMAIN THE PROPERTY OF MORRISON HERSHFIELD CORPORATION. NEITHER MORRISON HERSHFIELD NOR THE ARCHITECT WILL BE PROVIDING CONSTRUCTION REVIEW OF THIS PROJECT.

CONSTRUCTION		
0	10/01/20	CONSTRUCTION
A	09/11/20	ISSUED FOR REVIEW
No.	Date	Revision

Client:



Implementation Team:



A/E Team:



Project Info:

**FISHERMAN**  
53700 PAUL CT  
K2344, AK 99611

Drawing Title:

**COMPOUND  
PLAN &  
EQUIPMENT PLAN**

Project Number:	Start Date:
190400400	06/23/20
Drafter:	Designer:
LW	RB
Project Manager:	Professional of Record:
RKL	LC
Revision No:	Sheet No:
0	A-1.1

## COMMUNICATIONS SITE LEASE AGREEMENT

This COMMUNICATIONS SITE LEASE AGREEMENT (this “Agreement”) will become effective when all parties have signed the Agreement (the “Effective Date”). This Agreement is entered into by the **Kenai Peninsula Borough**, an Alaska municipal corporation, whose mailing address is 144 North Binkley Street, Soldotna, Alaska 99669 (hereinafter the “KPB” or “Lessor”), and **Vertical Bridge S3 Assets, LLC**, a Delaware limited liability company, whose mailing address is 750 Park of Commerce Drive, Suite 200, Boca Raton, FL 33487 (hereinafter “Lessee”).

### PART I. BACKGROUND, AUTHORIZED CONTACT AND CONTRACT DOCUMENTS

**1. Background.** The KPB owns certain real property located in the Kenai Peninsula Borough, in the state of Alaska, that is more particularly described and/or depicted in Exhibit 1 attached hereto (the “Property”). For good and valuable consideration, the parties agree that the KPB will grant the Lessee the right to use a portion of the Property in accordance with the terms of this Agreement.

**2. Authorized Contact.** All communications about this Agreement shall be directed as follows, and any reliance on a communication with a person other than listed below is at the party’s own risk.

#### KPB

Name: Kenai Peninsula Borough  
Attn: Land Management Division  
Re: Lease No.  
Mailing Address: 144 N. Binkley St.  
Soldotna, AK 99669

#### LESSEE

Name: Vertical Bridge S3 Assets, LLC  
Attn: Asset Manager  
Re: Cell Site #: USAK-5140  
Fixed Asset #:  
Mailing Address: 750 Park of Commerce Dr, Ste 200  
Boca Raton, FL 33487

**3. Contract Documents.** As authorized by KPB Ordinance 2022-xx, this lease agreement (“Agreement”) is the final and complete understanding of the parties. The following exhibits and appendices are attached and are considered part of this Agreement as well as anything incorporated by reference or attached to those exhibits or appendices:

Appendix A: Lease Provisions Required by KPB 17.10

Appendix B: Site Specific Lease Provisions

Exhibit 1: Description of the “Property” and the “Leased Premises”

Exhibit 2: Leased Premises site sketch

Exhibit 3: Memorandum of Lease

**If in conflict, the Agreement shall control. If in conflict, the order of precedence shall be: Appendix B, the Agreement, Appendix A, Exhibit 1, Exhibit 2, and then Exhibit 3.**



## **PART II. LEASE DESCRIPTION AND TERMS**

### **4. DESCRIPTION OF PROPERTY.**

(a) Subject to the terms and conditions of this Agreement, KPB hereby grants to Lessee an exclusive option to lease a certain portion of the Property containing approximately 1,575 square feet (45' x 35') including the air space above such ground space as described and depicted on Exhibit 1 and Exhibit 2 attached hereto (the "Leased Premises") for the placement of a Communication Facilities.

### **5. TERM.**

(a) The initial term will be five (5) years (the "Initial Term"), commencing on the Effective Date.

(b) Lessee will have the option to extend the term of this Agreement for four (4) successive terms of five (5) years each (each, a "Renewal Term"). Each Renewal Term will commence automatically, unless Lessee delivers notice to KPB, not less than thirty (30) days prior to the end of the then-current Term, of Lessee's intent not to renew. For purposes of this Agreement, "Term" includes the Initial Term and any applicable Renewal Term(s).

(c) Should Lessee or any assignee, sublessee or licensee of Lessee hold over the Leased Premises or any part thereof after the expiration of this Agreement, such holdover shall constitute and be construed as a tenancy from month-to-month only, but otherwise upon the same terms and conditions.

**6. TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:

(a) by Lessee upon written notice to KPB, if Lessee is unable to obtain, or maintain any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Lessee; or if Lessee in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

(b) by Lessee upon written notice to KPB, if Lessee determines, in its sole discretion, due to the title reports or survey results, that the condition of the Leased Premises is unsatisfactory for its intended uses;

(c) by Lessee upon written notice to KPB for any reason or no reason, at any time prior to commencement of construction by Lessee; or

(d) by Lessee upon sixty (60) days' prior written notice to KPB for any reason or no reason, so long as Lessee pays KPB a termination fee equal to six (6) months' Rent, at the then-current rate, and subject to removal requirements contained within Section 12. No such termination fee will be payable on account of the termination of this Agreement by Lessee under any termination provision contained in any other Section of this Agreement.

**7. RENT.** Beginning on the Effective Date, Lessee shall pay to KPB a monthly rent payment of One Thousand and No/100ths Dollars (\$1,000.00) ("Rent"), at the address set forth above on or before the fifth (5th) day of each calendar month in which Rent is due, in advance. Rent will be prorated for any

partial month. On each anniversary of the Term Commencement Date, Rent shall adjust annually by Three percent (3%) over the prior year's Rent amount.

**8. TAXES.** Lessee shall pay any personal property taxes assessed on, or any portion of such taxes attributable to, the Communication Facilities located on the Leased Premises, including private leasehold interests.

**9. USE.** The Leased Premises are being leased for the purpose of erecting, installing, operating and maintaining radio or communications towers, transmitting and receiving equipment, antennas, dishes, mounting structures, equipment shelters and other supporting structures, and related equipment (collectively, the "**Communication Facilities**"). Lessee may, subject to the foregoing, make any improvement, alteration or modification to the Leased Premises as are deemed appropriate by Lessee for the permitted use herein. Lessee will have the right to clear the Leased Premises of any trees, vegetation, or undergrowth which interferes with Lessee's use of the Leased Premises for the intended purposes. Notwithstanding Section 14 below, Lessee will have the exclusive right to install and operate upon the Leased Premises communications tower, buildings, equipment, antennas, dishes, fencing, and other accessories related thereto, and to alter, supplement, and/or modify same as may be necessary.

#### **10. SECURITY.**

(a) **Site Security.** Lessee may also elect, at its expense, to construct such other enclosures as Lessee reasonably determines to be necessary to secure its improvements, including the tower(s), building(s), guy anchors, and related improvements situated upon the Leased Premises. Lessee may also undertake any other appropriate means to restrict access to its communications towers, buildings, applicable guy anchors, applicable guy wires, and related improvements, including, without limitation, posting signs for security purposes.

#### **11. ACCESS, MAINTENANCE, AND UTILITIES.**

(a) **Access.** During the Term, Lessee, and its guests, agents, customers, lessees, sublessees and assigns will have the unrestricted, exclusive right to use, and will have free and unfettered access to, the Leased Premises seven (7) days a week, twenty-four (24) hours a day. KPBB for itself, its successors and assigns, hereby grants and conveys unto Lessee, its customers, employees, agents, invitees, sublessees, sublicensees, successors and assigns a nonexclusive easement to the extent depicted on Exhibit 2 (a) for ingress and egress, and (b) for the construction, installation, operation and maintenance of overhead and underground electric and other utility facilities (including fiber, backhaul, wires, poles, guys, cables, conduits and appurtenant equipment), with the right to reconstruct, improve, add to, enlarge, change and remove such facilities, over, across and through any easement for the benefit of and access to the Leased Premises, subject to the terms and conditions herein set forth. KPBB agrees to cooperate with Lessee's efforts to obtain such utilities and services. If there are utilities already existing on the Leased Premises which serve the Leased Premises, Lessee may utilize such utilities and services. Upon Lessee's request, KPBB will execute and deliver to Lessee requisite recordable documents evidencing the easements contemplated hereunder within fifteen (15) days of Lessee's request.

(b) **Maintenance.** Lessee will keep and maintain the Leased Premises in good condition.

(c) **Utilities.** The Lessee is solely responsible for installing separate meters for utility use and payment, as applicable, and shall not connect to any KPBB-owned electrical, communication, or other utility without KPBB's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed.

**12. EQUIPMENT, FIXTURES AND REMOVAL.** The Communication Facilities will at all times be the personal property of Lessee and/or its sublessees and licensees, as applicable. Lessee or its customers shall have the right to erect, install, maintain, and operate on the Leased Premises such equipment, structures, fixtures, signs, and personal property as Lessee may deem necessary or appropriate, and such property, including the equipment, structures, fixtures, signs, and personal property currently on the Leased Premises, will not be deemed to be part of the Leased Premises, but will remain the property of Lessee or its customers. At the conclusion of the lease and any renewals or extensions thereof, KPB shall have the option to retain the tower structure free of charge, as-is, where-is. Tower structure as used for the purpose of the option to retain means the tower frame, foundation, security fencing, utility lines, and other primary components essential to support KPB's communication equipment and any residual third party equipment intended by the parties at the time to remain in service. Unless otherwise agreed to in writing by the parties, or exercise of KPB's option to retain the tower structure, within ninety (90) days after the expiration or earlier termination of this Agreement, or upon cessation, abandonment, or non-use of the tower for communication purposes for a period of 6 consecutive months following construction of the tower (the "Removal Period"), Lessee must remove its improvements and restore the Leased Premises to grade in a natural condition free of contamination, reasonable wear and tear excepted, which shall include removal of all concrete and other foundation materials to a depth of ten feet (10') below grade, and perform all obligations under this Agreement during the Removal Period, including without limitation, the payment of Rent on a prorated per diem basis, at the rate in effect upon the expiration or termination of this Agreement. Any property not so removed shall be deemed abandoned and may be removed and disposed of by KPB in such manner as KPB will determine, without any obligation on the part of KPB to account to Lessee for any proceeds therefrom. Time is of the essence.

**13. ASSIGNMENT.** Lessee may assign this Agreement to any person or entity, at any time with prior written consent of KPB's mayor which will not be unreasonably withheld or delayed so long as the Assignee agrees to the assignment and novation and complies with all terms of this Agreement. Notwithstanding the foregoing, upon thirty (30) days' written notice to KPB, Lessee may assign this Agreement or its rights or obligations to (a) any person or entity controlling, controlled by, or under common control with Lessee, or (b) in connection with the sale or other transfer of substantially all of Lessee's assets in the FCC market area where the Leased Premises is located.

#### **14. SUBLEASING AND REVENUE SHARE.**

(a) **Subleasing.** Lessee will have the exclusive right to sublease or grant licenses to use the improvements or any other towers, structures, equipment, or ground space on the Leased Premises, provided that Lessee sends Lessor written notice within (15) days of such sublease or grant licenses.

(b) **Revenue Share.** In addition to and separate from the Rent, Lessee shall pay to the Lessor thirty-three percent (33%) of rents actually collected by Lessee from any applicable sublessees, sublicenses, collocation or similar vertical space rental agreements, exclusive of non-recurring fees (e.g. structural analysis fees, mount analysis fees, and capital expenditures) and reimbursements (such as for taxes and utilities) ("Revenue Share"). The Revenue Share shall be paid to Lessor with the Rent in the month immediately following receipt by Lessee from the applicable sublessee. Upon reasonable written request, Lessee will provide Lessor redacted copies of any applicable Sublease for the purpose of confirming relevant financial terms and information. For the purposes of this Agreement: (i) "Sublease" is defined as any arrangement in which the Lessee or any sublessee leases to another party or entity, any portion of the Lease Premises described in this Agreement or improvements thereon, including but not limited to a sublease for an antenna, microwave dish, or wireless communications equipment; and (ii) "Sublessee" means any sublessee or licensee of Lessee, that: (A) has entered into a sublease or license with Lessee for

the use of the improvements after the Effective Date; and (B) is not paying any rent or fees directly to Lessor for the use of ground space related to the use of Lessee's improvements.

(c) **Authorized Contact of Sublessee.** Lessee shall provide the KPB the name, telephone number, and email address of the authorized contact for the sublessee who is responsible for sublessee's day-to-day operations or activities on the Leased Premises.

**15. CO-LOCATE RIGHTS RESERVED BY KPB.** KPB reserves the right to install emergency response communication equipment on Lessee's tower. Ninety (90) days prior to the exercise of this reservation, KPB shall provide Lessee with a complete inventory of equipment and proposed vertical location. Lessee shall confirm KPB's equipment will not interfere with Lessee's or then-existing sublessee's equipment or propose an alternate location. Upon installation of KPB's equipment on the Leased Premises, any future sublessee's equipment shall not interfere with KPB's emergency response communication equipment, provided such equipment is properly installed and lawfully operated. Notwithstanding the foregoing, KPB's right to install equipment on Lessee's tower will be subject to Lessee's reasonable determination that, at the time in which KPB proposes to install its equipment, Lessee's tower shall have sufficient space and structural capacity to accommodate the additional loading associated with KPB's proposed equipment installation. In connection with the foregoing, each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Section 15 and the consummation of the transactions contemplated hereby.

#### **16. COVENANTS, WARRANTIES AND REPRESENTATIONS.**

(a) KPB represents and warrants that KPB is the owner in fee simple of the Property, free and clear of all liens and encumbrances except as to those which may have been disclosed to Lessee in writing prior to the execution hereof, and that KPB alone has full right to lease the Leased Premises for the Term.

(b) KPB shall not do or knowingly permit anything during the Term that will unreasonably interfere with or negate any Lessee's quiet enjoyment and use of the Leased Premises or cause Lessee's use of the Leased Premises to be in nonconformance with applicable local, state, or federal laws. KPB will cooperate with Lessee in any effort by Lessee to obtain certificates, permits, licenses and other approvals that may be required by any governmental authorities. KPB agrees to promptly execute any necessary applications, consents or other documents as may be reasonably necessary for Lessee to apply for and obtain the proper zoning approvals required to use and maintain the Leased Premises and the Communication Facilities.

(c) To the best of KPB's knowledge, KPB has complied and will comply with all laws with respect to the Property. No asbestos-containing thermal insulation or products containing PCB, formaldehyde, chlordane, or heptachlor or other hazardous materials have been placed on or in the Property by KPB or, to the knowledge of KPB, by any prior owner or user of the Property. To the knowledge of KPB, there has been no release of or contamination by hazardous materials on the Property.

(d) Subject to Section 11 above, Lessee will have access to all utilities required for the operation of Lessee's improvements on the Leased Premises that are existing on the Property.

(e) Except for the sublessees and licensees of Lessee, there currently exist no licenses, sublicenses, or other agreements, written or oral, granting to any party or parties the right of use or occupancy of any portion of the Leased Premises; there are no outstanding options or rights of first refusal to purchase the



Property or any portion thereof or interest therein, or any equity or interest in KPB if KPB is an entity; and there are no parties (other than KPB) in possession of the Leased Premises except as to those that may have been disclosed to Lessee in writing prior to the execution hereof.

(f) Each party hereto warrants and represents that it has the necessary power and authority to enter into and perform its respective obligations under this Agreement.

## **17. WAIVERS.**

(a) KPB hereby waives any and all lien rights it may have, statutory or otherwise, in and to the Communication Facilities or any portion thereof, regardless of whether or not such is deemed real or personal property under applicable laws. KPB will not assert any claim whatsoever against Lessee for loss of anticipatory profits or any other indirect, special, incidental or consequential damages incurred by KPB as a result of the construction, maintenance, operation or use of the Leased Premises by Lessee.

(b) EACH PARTY HERETO WAIVES ANY AND ALL CLAIMS AGAINST THE OTHER FOR ANY LOSS, COST, DAMAGE, EXPENSE, INJURY OR OTHER LIABILITY WHICH IS IN THE NATURE OF INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHICH ARE SUFFERED OR INCURRED AS THE RESULT OF, ARISE OUT OF, OR ARE IN ANY WAY CONNECTED TO THE PERFORMANCE OF THE OBLIGATIONS UNDER THIS AGREEMENT.

**18. INSURANCE.** Insurance coverage required under this Agreement shall be primary and exclusive of any other insurance carried by the Borough. Minimum levels of insurance coverage required under this Agreement shall remain in effect for the life of this Agreement and shall be a part of the contract price. If Contractor's policies contain higher limits, the KPB shall be entitled to coverage to the extent of such higher limits. There shall be no cancellation or material change of the insurance coverages, or intent not to renew the insurance coverages as specified in this Agreement, without thirty (30) calendar days' prior written notice to the Borough. Certificates of Insurance, acceptable in form and content, will be delivered to the Borough at the time of submission of the signed Agreement and updated certificates shall be provided upon insurance coverage renewal, where applicable. Lessee and subcontractor(s), sublessees, sublicenses, of any tier shall provide and maintain:

(a) Commercial General Liability (CGL):, The CGL Policy shall be written on an occurrence basis and with a limit of not less than One Million and No/100ths Dollars (\$1,000,000.00) each occurrence and aggregate. CGL insurance shall be written on standard ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, broad form property damage, independent contractors, products-completed operations, personal injury and advertising injury, explosion, collapse, underground hazards, and liability assumed under a contract including the tort liability of another assumed in a business contract. If necessary to provide the required limits, the Commercial General Liability policy's limits may be layered with a Commercial Umbrella or Excess Liability policy. This policy shall name the KPB as Additional Insured. To the extent damages are covered by commercial general liability insurance, subrogation shall be waived.

(b) Umbrella / Excess policy: With limits of Two Million and No/100ths Dollars (\$2,000,000.00) per occurrence and in the aggregate. Lessee may use any combination of primary and excess insurance to meet the total limits required.

(c) **Worker's Compensation Insurance:** For all employees engaged in work under this Agreement, Workers' Compensation Insurance in accordance with the laws of the State of Alaska. The Contractor shall be responsible for Workers' Compensation Insurance for any subcontractor(s) who directly or indirectly provides services under this Agreement. This coverage must include statutory coverage for states in which employees are engaging in work and employer's liability protection not less than Five Hundred Thousand and No/100ths Dollars (\$500,000.00) Each Accident, Five Hundred Thousand and No/100ths Dollars (\$500,000.00) Each Person and Five Hundred Thousand and No/100ths Dollars (\$500,000.00) policy limit. Where applicable, coverage for all federal acts (i.e., U.S.L. & H and Jones Act) must also be included.

(d) **Property Insurance:** Insuring against all risks of loss to any Lessee improvements at full replacement cost with no insurance penalty provision. Lessee shall have the right to self-insure such Property Insurance.

(e) **Automobile Liability:** The Auto Liability Policy shall include a Combined Single Limit of not less than One Million and No/100ths Dollars (\$1,000,000.00); Underinsured and Uninsured Motorists limit of not less than One Million and No/100ths Dollars (\$1,000,000.00); Coverage shall include Non-Owned and Hired Car coverage. This policy shall name the KPB as Additional Insured. To the extent damages are covered by auto liability insurance, subrogation shall be waived.

(f) **Full policies.** At its option, the Borough may request copies of required policies and endorsements. Such copies shall be provided within (10) TEN CALENDAR DAYS of the Borough's request. All insurance required hereunder shall be maintained in full force and effect with insurers with Best's rating of AV or better and be licensed and admitted in Alaska.

(g) **No Representation of Coverage Adequacy.** By requiring insurance herein, the Borough does not represent that coverage and limits will necessarily be adequate to protect Lessee, sublessee, and/or contractor or subcontractor(s) of any tier, and such coverage and limits shall not be deemed as a limitation on the liability of the Contractor and subcontractor(s) of any tier under the indemnities granted to the Borough in this Agreement.

(i) **Self-insurance.** Notwithstanding the foregoing, Lessee may self-insure any required coverage under the same terms as required by this Agreement.

**19. WAIVER OF SUBROGATION.** To the extent allowed by law, Lessee hereby grants to KPB a waiver of any right of subrogation which any insurer of said Lessee may acquire against the KPB by virtue of the payment of any loss under such insurance. It is the Lessors sole and strict responsibility to notify its insurer of this obligation and obtain a waiver of subrogation endorsement from the insurer, if required.

**20. NON-EXCLUSIVITY.** KPB acknowledges and agrees that, except as may be disclosed to Lessee in writing prior to the execution hereof, there are no prior existing rights, uses, or authorization granted to third parties or retained by KPB to locate improvements below grade or in proximity to the Leased Premises. Upon at least sixty (60) days prior written notice to Lessee, KPB reserves the right to grant further or additional rights or authorization to locate improvements below grade or in proximity to

the Leased Premises to the extent such rights or authorizations do not unreasonably interfere with Lessee's equipment or operations.

**21. LESSEE LIABILITIES.** In addition to other liabilities under this Agreement, the Lessee has the following liabilities and agrees:

(a) The Lessee assumes all risk of loss, damage or destruction to Lessee's improvements on the Leased Premises.

(b) The Lessee will comply with all applicable federal, state, and local laws or regulations, including relevant environmental laws, as well as public health and safety laws and other laws relating to the sitting, permitting, construction, operation and maintenance of any facility, improvement or equipment on the Leased Premises.

(c) The KPB has no duty, either before or during the lease term, to inspect the Leased Premises or warn of hazards and if the KPB inspects the Leased premises, it shall incur no additional duty nor any liability for hazards not identified or discovered through such inspections. This Section shall survive the termination or revocation of this Agreement, regardless of cause.

(d) The Lessee has an affirmative duty to protect from damage the Property and interests of the KPB related to this Agreement.

**22. INDEMNIFICATION.**

(a) Lessee agrees to defend, indemnify, and hold harmless KPB, its employees, public officials, and volunteers, with respect to any action claim or lawsuit arising out of (1) a breach of this Agreement or (2) the use and occupancy of the Leased Premises or the Property by the Lessee. This agreement to defend, indemnify, and hold harmless includes all losses and liabilities without limitation as to any damages resulting from judgment, or verdict, and includes the award of any attorney's fees even if in excess of Alaska Civil Rule 82. The obligations of Lessee arise immediately upon notice to the KPB of any action, claim, or lawsuit. KPB will notify Lessee in a timely manner of the need for indemnification but such notice is not a condition precedent to Lessee's obligation and may be waived where the Lessee has actual notice. This agreement applies and is in full force and effect whenever and wherever any action, claim or lawsuit is initiated, filed, or otherwise brought against KPB relating to the Lessee's use and occupancy of the Leased Premises or the Property. Notwithstanding the foregoing, Lessee's duty to indemnify, defend, and hold harmless KPB as set forth above shall not apply to the extent a claim arises from the negligence or willful misconduct of KPB, its employees, public officials, and volunteers.

(b) To the extent allowed by law and subject to a specific appropriation by the KPB Assembly for this purpose, KPB agrees to defend, indemnify, and hold harmless Lessee, its employees, affiliates, officers, directors, successors and assigns, with respect to any action claim or lawsuit arising out of the use and occupancy of the Leased Premises or the Property by the KPB. This agreement to defend, indemnify, and hold harmless includes all losses and liabilities without limitation as to any damages resulting from judgment, or verdict, and includes the award of any attorney's fees even if in excess of Alaska Civil Rule 82. The obligations of KPB arise immediately upon notice to the Lessee of any action, claim, or lawsuit. Lessee will notify KPB in a timely manner of the need for indemnification but such notice is not a condition precedent to KPB's obligation and may be waived where the KPB has actual notice. This agreement applies and is in full force and effect whenever and wherever any action, claim or lawsuit is initiated, filed, or otherwise brought against Lessee relating to the KPB's use and occupancy of the Leased Premises or the Property. Notwithstanding the foregoing, KPB's duty to indemnify, defend, and hold harmless Lessee as

set forth above shall not apply to the extent a claim arises from the negligence or willful misconduct of Lessee, its employees, its employees, affiliates, officers, directors, successors and assigns. Lessee further acknowledges the following: (1) KPB currently has no appropriation currently available to it to defend and indemnify Lessee under this provision; (2) the enactment of any such appropriation remains in the sole discretion of the KPB Assembly; and (3) the KPB Assembly's failure to make such an appropriation creates no further obligation or duty on behalf of KPB.

**23. INSPECTION.** The KPB reserves the right to enter upon and inspect the Leased Premises at any time to assure compliance with the conditions of this Lease. Except in case of emergency, KPB shall provide Lessee with at least forty-eight (48) hours' prior written notice of KPB's intention to enter upon and inspect the Leased Premises. Lessee reserves the right to have a representative present at all times during KPB's inspection.

**24. FORCE MAJEURE.** The time for performance by KPB or Lessee of any term, provision, or covenant of this Agreement will be deemed extended by time lost due to delays resulting from acts of God, strikes, civil riots, floods, material or labor restrictions by governmental authority, and any other cause not within the control of KPB or Lessee, as the case may be.

**25. DEFAULT.** The failure of Lessee or KPB to perform any of the covenants of this Agreement will constitute a default. The non-defaulting party must give the other written notice of such default, and the defaulting party must cure such default within thirty (30) days after receipt of such notice. In the event any such default cannot reasonably be cured within such thirty (30) day period, the defaulting party must provide prompt notice of inability to cure and provide a plan to cure the default within a time frame provided. The time for curing a default will be extended for such period of time as may be necessary and reasonable; however, in no event will this extension of time to cure be in excess of ninety (90) days, unless agreed upon in writing by the non-defaulting party.

**26. REMEDIES.** Should the defaulting party fail to cure a default under this Agreement, the other party will have all remedies available either at law or in equity, including the right to terminate this Agreement.

**27. LESSEE MORTGAGES.**

(a) KPB consents to the granting by Lessee of a lien and security interest (each, a "**Lessee Mortgage**") in Lessee's interest in this Agreement and all of Lessee's personal property and fixtures attached to the real property described herein to one or more lenders (any such lender, and any successor, assign, designee or nominee of such lender, hereinafter a "**Lender**") only to the extent and amount necessary to maintain improvements on the Leased Premises. The Lessee may not encumber the leasehold interest or the Leased Premises to finance projects or improvements outside of the Leased Premises. KPB agrees to recognize Lender as Lessee hereunder upon any such exercise by Lender of its rights of foreclosure. Any such encumbrance shall be subordinate to KPB's rights and interest in the Leased Premises and the Property. Any such encumbrance shall be limited to the Lessee's interest in the Leased Premises. It is a material breach of this Agreement for Lessee to attempt to encumber any interest in KPB's title to or interest in the Leased Premises or the Property.

(b) KPB acknowledges that nothing contained herein shall be deemed or construed to obligate Lender to take any action hereunder, or to perform or discharge any obligation, duty or liability of Lessee under this Agreement. No Lender shall become liable under the provisions of this Agreement unless and until such time as the Lender assumes ownership of the leasehold estate created hereby and agrees to comply with the terms and conditions of this Agreement or any extensions and modifications thereof.



## 28. MISCELLANEOUS.

(a) **Survival.** If any term of this Agreement is found to be void or invalid, such invalidity will not affect the remaining terms of this Agreement, which will continue in full force and effect.

(b) **Non-waiver.** Failure of party to insist on strict performance of any of the conditions or provisions of this Agreement, or failure to exercise any of a party's rights hereunder, will not waive such rights.

(c) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Alaska.

(d) **Bind and Benefit.** This Agreement is binding upon and will inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

(e) **Memorandum.** A short-form Memorandum of Lease may be recorded at KPB or Lessee's option in the form as depicted in Exhibit 3, attached hereto. KPB will promptly execute any Memorandum of Lease or Memorandum of Amendment to Lease, or corrective amendments thereto, upon written request of Lessee.

(f) **W-9.** As a condition precedent to payment, the KPB agrees to provide the Lessee with a complete IRS Form W-9, or its equivalent, upon execution of this Agreement.

(g) **Counterparts.** This Agreement may be executed in counterpart, each of which when so executed and delivered shall be considered an original and all of which when taken together will constitute one and the same instrument.

(h) **Entire Agreement.** This Agreement and exhibits, appendices or incorporated attachments hereto, constitute the entire agreement and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

[SIGNATURES BEGIN ON NEXT PAGE]

### PART III. EXECUTION

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date (date last signed by a party hereto).

**LESSOR:** The Kenai Peninsula Borough

**LESSEE:** Vertical Bridge S3 Assets, LLC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

\_\_\_\_\_  
Johni Blankenship, Borough Clerk

\_\_\_\_\_  
A. Walker Steinhage, Deputy Borough Attorney

## LESSOR ACKNOWLEDGEMENT

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

Notary Public for State of Alaska  
My Commission Expires: \_\_\_\_\_

## LESSEE ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
 ) ss:  
THIRD JUDICIAL DISTRICT )

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, and acknowledged under oath that he/she is the \_\_\_\_\_ of Vertical Bridge S3 Assets, LLC a Delaware limited liability company, the Lessee named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Lessee.

Notary Public: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

## **EXHIBIT 1**

### **DESCRIPTION OF PROPERTY AND PREMISES**

Page 1 of 1

The Property is legally described as follows:

**Lot 2, Redoubt Highway Subdivision of Tract 2, according to Plat No. 1549, on file in the Kenai Recording District, Third Judicial District, State of Alaska.**

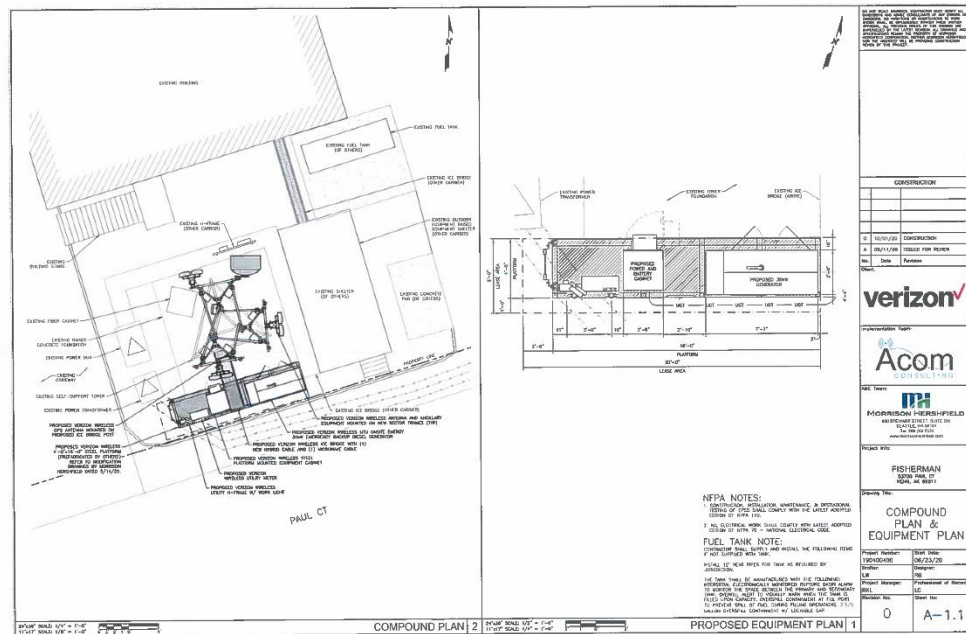
The Leased Premises are described as follows:

On the above described Property, a 45-foot by 35-foot area (1,575 square feet) area with direct access from Paul Court, as depicted on Exhibit 2.



### Leased Premises

The Premises are depicted as follows:



### **EXHIBIT 3**

#### **Memorandum of Lease**

(Attached)

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(Above 2" Space for Recorder's Use Only)

**Prepared by and Return to:**

Kenai Peninsula Borough  
Attn: Land Management Division  
144 N. Binkley St.  
Soldotna, AK 99669

Grantor: Kenai Peninsula Borough  
Grantee: Vertical Bridge S3 Assets, LLC  
Legal Description: Attached as Exhibit 1  
Tax Parcel ID #: 01726050  
Site Name: USAK-5140  
State: Alaska  
Borough: Kenai Peninsula Borough  
Recording District: Kenai, Third Judicial

**MEMORANDUM OF LEASE**

**THIS MEMORANDUM OF LEASE** ("Memorandum") is entered into by and between **KENAI PENINSULA BOROUGH**, an Alaska municipal corporation, having a mailing address of 144 N. Binkley St., Soldotna, AK 99669 (hereinafter called "**Lessor**") and **Vertical Bridge S3 Assets, LLC**, a Delaware limited liability company, having a mailing address of 750 Park of Commerce Drive, Suite 200, Boca Raton, FL 33487 ("**Lessee**").

1. Lessor and Lessee entered into a certain Communications Site Lease Agreement ("Agreement") on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the purpose of installing, operating and maintaining a communication facility and other improvements. All of the foregoing is set forth in the Agreement.
2. The initial lease term will be five (5) years commencing on the Effective Date with four (4) successive automatic five (5) year options to renew.
3. The portion of the land being leased to Tenant ("Premises") and associated easements are described in Exhibit 1 annexed hereto.
4. Lessor and Lessee now desire to execute this Memorandum to provide constructive knowledge of Tenant's lease of the Premises.
5. This Memorandum and Agreement are governed by the laws of the state of Alaska.

**IN WITNESS WHEREOF**, the parties have executed this Memorandum of Lease as of the day and year first above written.

**LESSOR:** The Kenai Peninsula Borough

**LESSEE:** Vertical Bridge S3 Assets, LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

Notary Public for State of Alaska  
My Commission Expires: \_\_\_\_\_

STATE OF ALASKA )  
 ) ss:  
THIRD JUDICIAL DISTRICT )

Notary Public: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_





KENAI PENINSULA BOROUGH

ORDINANCE 71-22

AN ORDINANCE OF THE KENAI PENINSULA BOROUGH, CONFIRMING THE RESULTS OF THE SPECIAL ELECTION HELD THEREIN ON OCTOBER 6, 1970, AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$150,000 OF GENERAL OBLIGATION BONDS OF THE BOROUGH TO BE USED FOR SITE ACQUISITION, PURCHASE, CONSTRUCTION, RECONSTRUCTION OF AND THE PURCHASE OF CAPITAL EQUIPMENT FOR A FIRE STATION OR FIRE STATIONS, PROVIDING FOR THE ISSUANCE AND SALE OF A \$65,000 BOND: FIXING THE DATE, FORM, TERM AND MATURITIES AND COVENANTS OF SUCH BOND: PLEDGING THE ANNUAL LEVY OF AD VALOREM TAXES WITHIN THE SERVICE AREA WITHOUT LIMITATION AND IN AMOUNTS SUFFICIENT WITH OTHER REVENUE OF THE BOROUGH AVAILABLE FOR SUCH PURPOSES, TO PAY THE PRINCIPAL THEREOF AND THE INTEREST THEREON: AND PLEDGING THE FULL FAITH AND CREDIT OF THE KENAI PENINSULA BOROUGH TO THE PAYMENT OF ANY INDEBTEDNESS SO INCURRED.

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WHEREAS, at a special election held in the Kenai Peninsula Borough, Alaska (hereinafter designated "Borough") on the 6 day of October, 1970, pursuant to Resolution 70-21R of the Borough, adopted August 1, 1970, placing the proposition on the ballot, the qualified electors of the North Kenai Fire Service Area of the Borough authorized the issuance of general obligation bonds or other evidence of indebtedness in an amount not to exceed \$150,000 to be used for site acquisition, purchase, construction, reconstruction of and the purchase of capital equipment for a fire station or fire stations, as the assembly of the Borough from time to time may determine to be necessary; and

WHEREAS, the Borough has not heretofore issued or sold any of such bonds or other evidence of indebtedness; and

WHEREAS, it is deemed necessary and advisable that \$65,000 of such bonds so authorized be now issued and sold to Pade Company as partial payment for the purchase of a fire station.

BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

Section 1. The result of the special borough election held October 6, 1970, pursuant to Resolution No. 70-21 R of the Borough, adopted August 1, 1970, and the Statutes of the State of Alaska and the Ordinances of the Borough, at which special election the qualified electors of the North Kenai Fire Service Area of the Borough authorized the issuance of general obligation bonds and other evidence of indebtedness in the principal sum of not to exceed \$150,000 to be used for site acquisition, purchase, construction, re-construction of and the purchase of capital equipment for a fire station or fire stations, as the Assembly of the Borough from time to time may determine to be necessary, is hereby in all respects ratified and confirmed.

Section 2. For the purpose of completing the purchase of a fire station from Pade Company, the Borough shall issue and deliver to Pade Company its "General Obligation North Kenai Fire Service Area Bond, 1971", in the principal sum of \$65,000.

Section 3. The bond shall be dated September 1, 1971, shall be in the denomination of \$65,000 increments of principal and interest, shall be payable annually on the first day of September of each year from date of issue in accordance with the following schedule:

	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
1972-73	\$ 6,500	\$ 3,250	\$ 9,750
1973-74	6,500	2,925	9,425
1974-75	6,500	2,600	9,100
1975-76	6,500	2,275	8,775
1976-77	6,500	1,950	8,450
1977-78	6,500	1,625	8,125
1978-79	6,500	1,300	7,800
1979-80	6,500	975	7,475
1980-81	6,500	650	7,150
1981-82	6,500	325	6,825

Both principal of and interest on said bond shall be payable in lawful money of the United States of America to the Pade Company or order at Seattle, Washington, or elsewhere at the option of the bond holder.

Section 5. The bond shall be in substantially the following form:

\$65,000.00

UNITED STATES OF AMERICA

STATE OF ALASKA

KENAI PENINSULA BOROUGH  
NORTH KENAI FIRE SERVICE AREA

GENERAL OBLIGATION BOND, 1971

5%

KNOW ALL MEN BY THESE PRESENTS: That the Kenai Peninsula Borough, a municipal corporation of the State of Alaska, for value received, hereby promises to pay to the order of Pade Company, the principal sum of

SIXTY FIVE THOUSAND DOLLARS

together with interest thereon at the rate of 5% per annum payable annually on the first day of September of each year in accordance with the following schedule:

	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
1972-73	\$ 6,500	\$ 3,250	\$ 9,750
1973-74	6,500	2,925	9,425
1974-75	6,500	2,600	9,100
1975-76	6,500	2,275	8,775
1976-77	6,500	1,950	8,450
1977-78	6,500	1,625	8,125
1978-79	6,500	1,300	7,800
1979-80	6,500	975	7,475
1980-81	6,500	650	7,150
1981-82	6,500	325	6,825

Both principal and interest are payable in lawful money of the United States of America to Pade Company, or order at Seattle, Washington or elsewhere at the option of the holder hereof.

Kenai Peninsula Borough  
Ordinance 71-22 Page 3.



The bond shall be subject to redemption by or on behalf of the Borough prior to maturity, in whole or in part, on any payment date at the principal amount, together with interest accrued thereon to the redemption date.

This bond is issued pursuant to a special election held on October 6, 1970, authorizing the same under and in accordance with the laws of the State of Alaska and duly adopted ordinances and resolutions of the Kenai Peninsula Borough Assembly, for the purpose of providing funds to be used for site acquisition, purchase, construction, reconstruction of and the purchase of capital equipment for a fire station or fire stations as the Assembly of the Borough from time to time may determine to be necessary.

The Borough has irrevocably covenanted that it will levy and collect taxes annually upon all the taxable property within the North Kenai Fire Service Area of the Borough without limitation as to rate or amount and in amounts, which with other moneys available therefor will be sufficient to pay the principal of and interest on the bond as the same shall become due. The Borough has irrevocably pledged to make prompt payment of such principal and interest from the proceeds of such property taxes or other available revenues.

It is hereby certified that all acts, conditions and things required by the Constitution and laws of the State of Alaska, and the ordinances and resolutions of the Borough have happened, been done and performed, and that the total indebtedness of the Borough, including this bond, does not exceed any debt limitation prescribed by such Constitution, laws, ordinances or resolutions.

IN WITNESS WHEREOF, the Kenai Peninsula Borough, Alaska, has caused this bond to be signed by the manual or facsimile signature of the borough chairman and attested by the manual or facsimile signature of its clerk and its official seal or a facsimile thereof to be impressed or otherwise reproduced hereon, this first day of September, 1971.

KENAI PENINSULA BOROUGH, ALASKA

By \_\_\_\_\_  
Borough Chairman

Kenai Peninsula Borough  
Ordinance 71-22 Page 4.

ATTEST:

\_\_\_\_\_  
Borough Clerk

Section 6. The bond shall be signed by the manual or facsimile signature of the borough chairman, shall be attested by manual or facsimile signature of the borough clerk, and shall have the official seal or facsimile thereof of the Borough impressed thereon.

Section 7. The Borough hereby irrevocably covenants that it will levy and collect taxes annually upon all the taxable property within the North Kenai Fire Service Area of the Borough without limitation as to rate or amount and in amounts which with other moneys available therefor will be sufficient to pay such principal and interest as the same shall become due. The full faith, credit and resources of the Borough are hereby irrevocably pledged for the annual levy and collection of such taxes within the North Kenai Fire Service Area and for the prompt payment of such principal and interest.

Section 8. This ordinance shall become effective thirty days after enactment.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH  
THIS 12 DAY OF October, 1971.

  
\_\_\_\_\_  
Assembly President

ATTEST:

  
\_\_\_\_\_  
Borough Clerk



## Kenai Peninsula Borough Office of the Borough Clerk

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### MEMORANDUM

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

**THRU:** Brandi Harbaugh, Finance Director *SD for BH*  
Sean Kelley, Borough Attorney *SK*

**FROM:** Johni Blankenship, Borough Clerk *JB*

**DATE:** December 22, 2021

**RE:** Alaska Off Grid Cannabis Co. – Standard Marijuana Cultivation Facility  
New License 27711

---

On September 21, 2021, the Assembly approved the issuance of a Letter of Protest to the Alcohol & Marijuana Control Board regarding the new marijuana cultivation License 27111 filed by Alaska Off Grid Cannabis Co.

The protest was based on the substantial outstanding tax obligations owed to the Kenai Peninsula Borough (KPB) by Shawn McDonough (debtor) who is a principal and 50% member owner of Alaska Off Grid Cannabis Co. The debtor has now agreed to enter into a payment plan to resolve the outstanding tax debts.

### **RECOMMENDATION:**

In consideration of a payment plan that will resolve the debtor's outstanding tax debt, it is recommended that the Assembly authorize the Borough Clerk to:

- (1) forward a notice of withdrawal of the assembly's September 21, 2021, protest of the license application to the Alcohol & Marijuana Control Office, upon debtor's entry into the secured payment plan with KPB; and
- (2) issue a letter of non-objection to the Alcohol Marijuana Control Office regarding the new marijuana cultivation license as requested by **Alaska Off Grid Cannabis Co.** with the recommendation that the following conditions be placed on the state license pursuant to 3 AAC 306.060(b):

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



# Kenai Peninsula Borough

## Planning Department

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### MEMORANDUM

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

**FROM:** Melanie Aeschliman, Planning Director *MA*

**DATE:** December 15, 2021

**RE:** Right-of-way Vacation: Fauerbach Court right-of-way vacation and associated utility easements and anchor easement, Clam Gulch Heights Glendening 1979 Subdivision, KPB File 2021-150V

---

In accordance with AS 29.40.140, no vacation of a Borough right-of-way and/or easement may be made without the consent of the Borough Assembly.

During their regularly scheduled meeting of December 13, 2021 the Kenai Peninsula Borough Planning Commission granted approval of the above proposed vacation of by unanimous vote based on the means of evaluating public necessity established by KPB 20.65 (5-Yes, 0-No, 3 Absent, 3-Vacant) This petition is being sent to you for your consideration and action.

A draft copy of the unapproved minutes of the pertinent portion of the meeting and other related materials are attached.

December 13, 2021 Planning Commission Draft Meeting Minutes  
December 13, 2021 Agenda Item E3 Meeting Packet

## **PETITIONER CONTACT INFORMATION**

**James E. Glendening  
694 Sycamore Circle  
Kenai, AK 99611**

**Daniel John Sims  
2130 9<sup>th</sup> Street W-174  
Columbia Falls, MT 59912**

**No Email Address Available**

**RECOMMENDATION:****STAFF RECOMMENDS:**

- GRANT APPROVAL OF THE PRELIMINARY PLAT SUBJECT TO STAFF RECOMMENDATIONS, AND
- COMPLIANCE WITH KPB 20.25.070 (FORM AND CONTENTS), KPB 20.25.080 (PETITION REQUIRED), KPB 20.30 (DESIGN REQUIREMENTS); AND KPB 20.40 (WASTEWATER DISPOSAL), AND
- COMPLIANCE WITH KPB 20.60 TO ENSURE ADMINISTRATIVE APPROVAL OF THE FINAL PLAT.

NOTE: 20.25.120. - REVIEW AND APPEAL.

A PARTY OF RECORD MAY REQUEST THAT A DECISION OF THE PLAT COMMITTEE BE REVIEWED BY THE PLANNING COMMISSION BY FILING A WRITTEN REQUEST WITHIN 15 DAYS OF NOTIFICATION OF THE DECISION IN ACCORDANCE WITH KPB 2.40.080.

A DECISION OF THE PLANNING COMMISSION MAY BE APPEALED TO THE HEARING OFFICER BY A PARTY OF RECORD WITHIN 15 DAYS OF THE DATE OF NOTICE OF DECISION IN ACCORDANCE WITH KPB 21.20.250.

**END OF STAFF REPORT**

Vice Chair Ruffner opened the meeting for public comment.

Jerry Johnson, Johnson Surveying, P.O. Box 27, Clam Gulch, AK 99568: Mr. Johnson was the surveyor on this project and made himself available for questions.

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

**MOTION:** Commissioner Venuti moved, seconded by Commissioner Brantley to grant preliminary approval to Towle Subdivision 2021 Replat based on staff recommendations and compliance with borough code.

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

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes	5	Absent	3	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Morgan, Ruffner, Venuti				
Absent	Fikes, Gillham, Martin				

**ITEM E3 - FAUERBACH COURT RIGHT OF WAY VACATION AND ASSOCIATED UTILITY EASEMENTS AND ANCHOR EASEMENT**

<b>KPB File No.</b>	2021-150V
<b>Planning Commission Meeting:</b>	December 13, 2021
<b>Applicant / Owner:</b>	James E. Glendening of Kenai, Alaska and Daniel John Sims of Columbia Falls, Montana
<b>Surveyor:</b>	Jerry Johnson / Johnson Surveying
<b>General Location:</b>	Russell Ave., Keener Dr., and Bartolowitz St. / Clam Gulch
<b>Legal Description:</b>	Lots 4, 5, 6 and 27, Clam Gulch Heights Glendening 1979 Subdivision Plat No 81-135

Staff report given by Scott Huff.

**Specific Request / Purpose as stated in the petition:** Lots are being combined with an associated replat, eliminating the need for this ROW.



**Notification:** Public notice appeared in the December 2, 2021 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the December 9, 2021 issue of the Peninsula Clarion as part of the Commission's tentative agenda.

The public notice was posted on the Planning Commission bulletin board at the Kenai Peninsula Borough George A. Navarre Administration building. Additional notices were mailed to the following with the request to be posted for public viewing.

Library of Clam Gulch

Post Office of Clam Gulch

Fourteen certified mailings were sent to owners of property within 600 feet of the proposed vacation. Six receipts had been returned when the staff report was prepared.

Seventeen public hearing notices were mailed to agencies and interested parties as shown below:

State of AK Dept. of Fish & Game

Ninilchik Traditional Council

State of AK DNR

Alaska Communication Systems (ACS)

State of AK DOT

ENSTAR Natural Gas

State of AK DNR Forestry

General Communications Inc. (GCI)

Central Emergency Services

Homer Electric Association (HEA)

**Legal Access (existing and proposed):** Fauerbach Court a 60 foot wide and 350 feet in length right of way that ends in a cul-de-sac. Fauerbach Court is unconstructed and not maintained by KPB Roads Department. It is located off of Bartolowitz Street, a 60 foot wide right of way that is only partially constructed and not maintained by the borough.

A replat has been submitted that will reconfigure four lots into three. Proposed Lot 4A and 27A will have access via Bartolowitz Street. Lots 5 and 6 will be combined into proposed Lot 5A and will have access from Keener Drive. Keener Drive is a 50 foot wide borough maintained right of way. Both Keener Drive and Bartolowitz Street are located off Russell Avenue, a 60 foot wide borough maintained right of way located near mile 117 of the Sterling Highway.

No new dedications are proposed.

The block is irregular in design. The block does close but the block length exceeds code requirements. Sterling Highway, Russell Avenue, Bartolowitz Street, Kizer Avenue, Glendening Street, and Sesame Avenue define the block. As the right of way proposed for vacation is a cul-de-sac, it does not improve block lengths or help provide a closed block. The vacation will not affect the block requirements.

KPB Roads Dept. comments	Out of Jurisdiction: No  Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	

**Site Investigation:** The right of way and lots adjoining this right of way are not affected by low wet areas. The right of way is free of any steep slopes. There are steep slopes that will divide the newly proposed Lot 5A and access to the northern portion may be more difficult without the right of way. Vacating the right of way may reduce the ability or design options for Lot 5A to be further subdivided.

River Center Review	A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments
River Center Review	B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments



	C. State Parks Reviewer: Russell, Pam Comments: No Comments
--	--

**Staff Analysis:** The subdivision is located in the Clam Gulch area and is not within an advisory planning commission boundary. It is located near mile 117 of the Sterling Highway.

The subject parcels and right of way were originally subdivided by Clam Gulch Heights, Plat KN 72-61. That plat created aliquot description lots. Clam Gulch Heights Glendening 1979 Subdivision, Plat KN 81-135, further subdivided the parcels and dedicated Shady Court. Resolution SN 2005-07 renamed Shady Court to Fauerbach Court.

Fauerbach Court provides the only legal access to Lot 5 and provides a secondary access to Lots 4, 6, and 27. A replat, Clam Gulch Heights 2021 Addition KPB File 2021-150, has been submitted. The proposed plat will combine Lots 5 and 6 into one lot with access from Keener Drive. Lot 4 and Lot 27 will continue to have access via Bartolowitz Street.

A 20 foot building setback was put in place adjoining Fauerbach Court. The parent plat granted the full setback as a utility easement. A 10 foot by 30 foot anchor easement was also granted within Lot 5 along the cul-de-sac, which extends beyond the granted easement by 10 feet. The proposal includes vacating the associated utility easement and the anchor easement. A 20 foot utility easement will be granted along the new lot line boundaries abutting Bartolowitz Street. Review has been sent to the utility companies for comment and staff recommends that requested easements be worked out with the utility companies and be granted.

#### **20.65.050 – Action on vacation application**

D. The planning commission shall consider the merits of each vacation request and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:

1. The right-of-way or public easement to be vacated is being used;  
**Staff comments:** The right of way is currently not constructed and does not appear to be used.
2. A road is impossible or impractical to construct, and alternative access has been provided;  
**Staff comments:** The road is relatively flat and contains no wet lands. Alternative access is provided by previously dedicated right of ways.
3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;  
**Staff comments:** Additional right of ways are in place, as well as utility easements, to provide adequate access and utilities to all surrounding parcels.
4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;  
**Staff comments:** This right of way does not provide access to any water body or area with public interest.
5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;  
**Staff comments:** The proposed vacation will not limit opportunities for interconnectivity with adjacent parcels and adequate right of ways and utility easements have been dedicated.
6. Other public access, other than general road use, exist or are feasible for the right-of-way;  
**Staff comments:** Other public access does not appear to be needed as the cul-de-sac provides access to private property.

7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a utility, shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a utility easement be granted in place of the right-of-way.

**Staff comments:** Utility easements will be provided that exceed requirements but follows the parent plat dedications. Any requested easements from utility providers shall be worked out with the land owners before final plat approval.

8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.

**Staff comments:** The right of way provided access to four lots. The reconfiguration proposed will allow all lots to have adequate access.

If approved, the plat Clam Gulch Heights 2021 Addition will finalize the proposed right of way vacations. The Planning Commission is scheduled to review the plat on December 13, 2021. If the vacation is approved, the consent by the Kenai Peninsula Borough Assembly is required. The Assembly must hear the vacation within thirty days of the Planning Commission decision. The Assembly should hear the vacation at their January 4, 2022 meeting.

**KPB department / agency review:**

Planner	
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Addressing	Reviewer: Haws, Derek Affected Addresses: 55450 FAUERBACH CT 17635 BARTOLOWITZ ST 17610 KEENER DR 17615 BARTOLOWITZ ST  Existing Street Names are Correct: Yes List of Correct Street Names: FAUERBACH CT BARTOLOWITZ ST KEENER DR KIZER AVE  Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied:  Comments: 55450 FAUERBACH CT will be deleted. 17635 BARTOLOWITZ ST will remain with lot 4A. 17610 KEENER DR will remain with lot 5A. 17615 BARTOLOWITZ ST will remain with lot 27A.
Assessing	Reviewer: Wilcox, Adeena Comments: No comment

**Utility provider review:**

HEA	No comments.
ENSTAR	No comments or objections.
ACS	No objections
GCI	Approved as shown.

**RECOMMENDATION:**

Based on consideration of the merits as per KPB 20.65.050(F) as outlined by Staff comments, Staff recommends APPROVAL as petitioned, subject to:



1. Consent by KPB Assembly.
2. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
3. Grant utility easements requested by the utility providers.
4. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).

#### **KPB 20.65.050 – Action on vacation application**

- H. A planning commission decision to approve a vacation is not effective without the consent of the city council, if the vacated area to be vacated is within a city, or by the assembly in all other cases. The council or assembly shall have 30 days from the date of the planning commission approval to either consent to or veto the vacation. Notice of veto of the vacation shall be immediately given to the planning commission. Failure to act on the vacation within 30 days shall be considered to be consent to the vacation. This provision does not apply to alterations of utility easements under KPB 20.65.070 which do not require the consent of the assembly or city council unless city code specifically provides otherwise.**
- I. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, where applicable, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent.**
- J. A planning commission decision denying a vacation application is final. No reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.**
- K. An appeal of the planning commission, city council or assembly vacation action under this chapter must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.**

The 2019 Kenai Peninsula Borough Comprehensive Plan adopted November, 2019 by Ordinance No. 2019-25. The relevant objectives are listed.

*Goal 3. Preserve and improve quality of life on the Kenai Peninsula Borough through increased access to local and regional facilities, activities, programs and services.*

*- Focus Area: Energy and Utilities*

- o *Objective A - Encourage coordination of residential, commercial, and industrial development with extension of utilities and other infrastructure.*

- *Strategy 1. Near – Term: Maintain existing easements (especially section line easements) in addition to establishing adequate utility rights of way or easements to serve existing and future utility needs.*
- *Strategy 2. Near – Term: Maintain regular contact with utility operators to coordinate and review utility easement requests that are part of subdivision plat approval.*
- *Strategy 3. Near – Term: Identify potential utility routes on Borough lands.*

*- Housing*

- o *Objective D. Encourage efficient use of land, infrastructure and services outside incorporated cities by prioritizing future growth in the most suitable areas.*

- *Strategy 1. Near – Term: Collaborate with the AK Department of Transportation, incorporated cities within the borough, utility providers, other agencies overseeing local services, and existing communities located adjacent to the undeveloped areas that are appropriate for future growth, to align plans for future expansion of services to serve future residential development and manage growth.*

*Goal 4. Improve access to, from and connectivity within the Kenai Peninsula Borough*

*- Focus Area: Transportation*

- *Objective B. Ensure new roads are developed in alignment with existing and planned growth and development.*
  - *Strategy 2. Near – Term: Establish subdivision codes that dictate road construction standards to accommodate future interconnectivity and/or public safety.*
  - *Strategy 3. Near – Term: Identify areas of anticipated growth to determine future access needs.*

### END OF STAFF REPORT

Vice Chair Ruffner opened the meeting for public comment.

Jerry Johnson, Johnson Surveying; P.O. Box 27, Clam Gulch, AK 99568: Mr. Johnson was the surveyor on this project and made himself available for questions.

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

**MOTION:** Commissioner Brantley moved, seconded by Commissioner Venuti to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.65, subject to staff recommendations and compliance with borough code.

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

#### MOTION PASSED BY UNANIMOUS VOTE:

Yes	5	Absent	3	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Morgan, Ruffner, Venuti				
Absent	Fikes, Gillham, Martin				

#### ITEM E4 - CLAM GULCH HEIGHTS 2021 ADDITION

<b>KPB File No.</b>	2021-150
<b>Plat Commission Meeting:</b>	December 13, 2021
<b>Applicant / Owner:</b>	James E. Glendening of Kenai, Alaska Daniel John Sims of Columbia Falls, Montana
<b>Surveyor:</b>	Jerry Johnson / Johnson Surveying
<b>General Location:</b>	Keener Drive, Bartolowitz Street and Fauerbach Court, Clam Gulch
<b>Parent Parcel No.:</b>	137-370-04, 137-370-05, 137-370-06, 137-370-07
<b>Legal Description:</b>	Lots 4, 5, 6 and 27, Clam Gulch Heights Glendening 1979 Subdivision Plat No 81-135
<b>Assessing Use:</b>	Residential
<b>Zoning:</b>	Rural Unrestricted
<b>Water / Wastewater</b>	On Site

Staff report given by Scott Huff.

**Specific Request / Scope of Subdivision:** The proposed plat creates three lots from four lots and finalizes a right of way vacation of Fauerbach Court including the associated utility easements.

**Location and Legal Access (existing and proposed):** The subdivision is located in the Clam Gulch area, near mile 117 of the Sterling Highway. The four parent lots have access from Fauerbach Court, a 60 foot wide right of way that ends in a cul-de-sac. Former Lot 6 has secondary access from Keener Drive.

If approved by the KPB Planning Commission and the KPB Assembly, this plat will finalize the vacation of Fauerbach Court.

The new lot configuration will result in Bartolowitz Street providing access to proposed lots 4A and 27A. Bartolowitz Street is a 60 foot wide right of way that is partially constructed and not maintained by the



## **DECEMBER 13, 2021 PC MEETING INFORMATION**

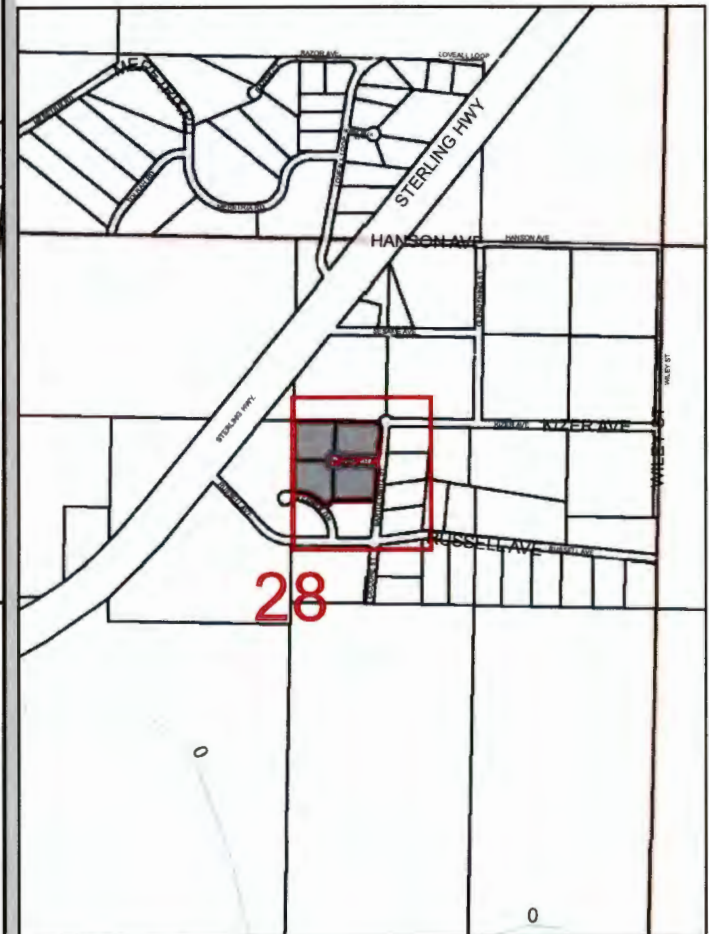
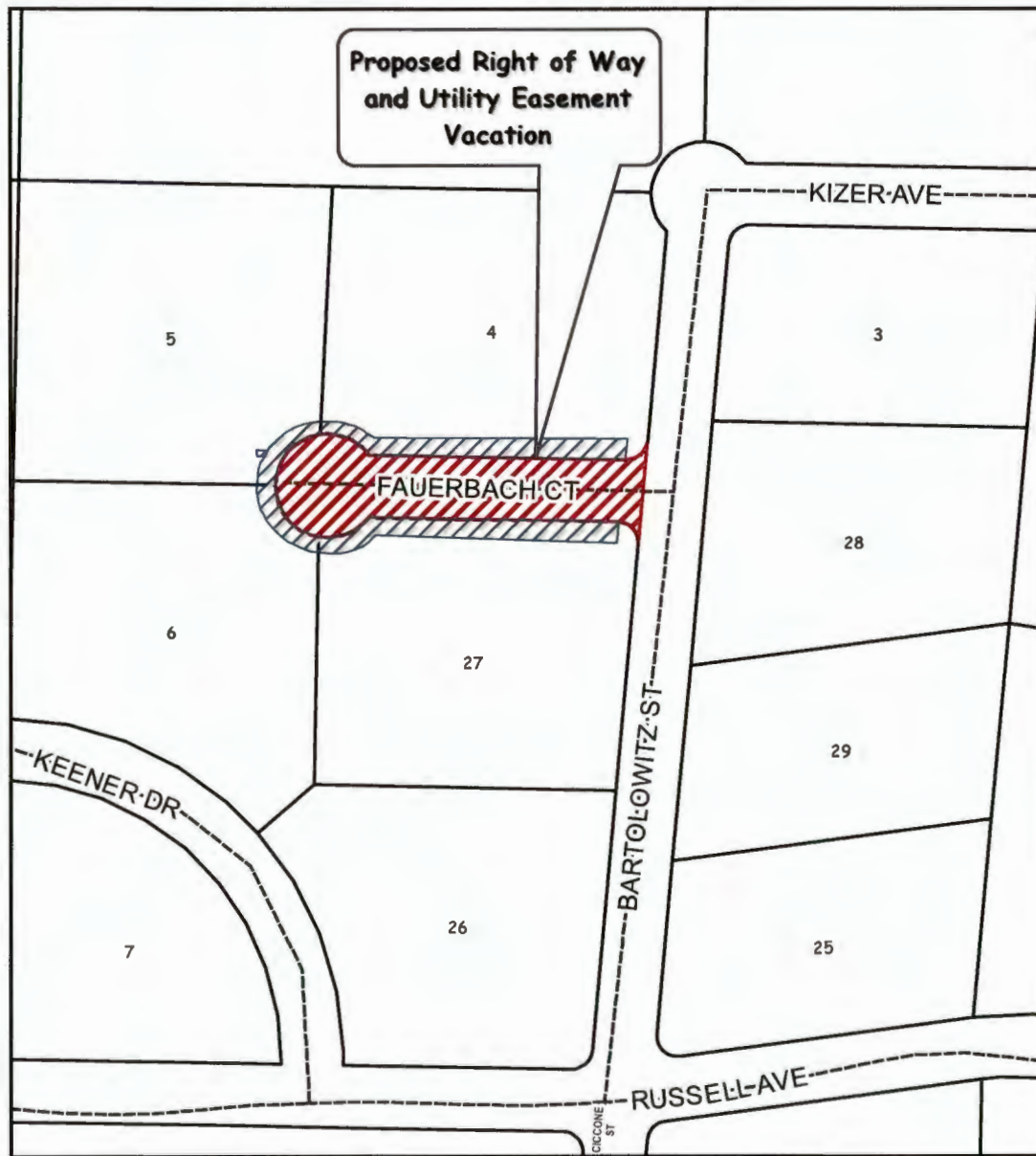
### **E. NEW BUSINESS**

#### **3. Right-of-Way Vacation; KPB 2021-150V**

**Request: Vacate a 60' cul-de-sac, Fauerbach Court running east to west approximately 303.94' & the associated 20' utility easement & anchor easement**

**Surveyor: Johnson Surveys**

**Petitioners: James E. Glendening & Daniel John Sims of Kenai  
Clam Gulch Area**



0 625 1,250 2,500 Feet



**KPB 2021-150V**  
**S28 T02N R12W**  
**Clam Gulch**

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.

0 125 250 500'

PClements, KPB 2021-150V Date: 11/16/2021





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

0 50 100 200'

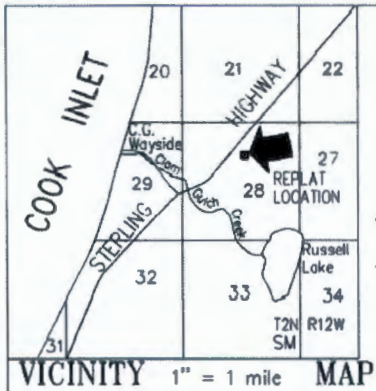
Aerial View



- Anchor Easement
- Utility Easement Vacation
- Right of Way Vacation

PClements, KPB 2021-150V  
Imagery FixedWing 2012-13





# Clam Gulch Heights 2021 Addition Preliminary Plat

A replat of Lots 4, 5, 6, & 27 Clam Gulch Heights, Glendening 1979 Subd. of Tracts 12, 13, 14, 15, 16, 17, 18 ( KRD 81-135 ), including a vacation of Fauerbach Ct & associated utility easements. Located in the NE1/4 Section 28, T2N R12W, SM, Clam Gulch, Alaska.  
Kenai Recording District Kenai Peninsula Borough

## Prepared for

James E Glendening  
694 Sycamore Cir.  
Kenai, AK 99611

Daniel John Sims  
2130 9th St W  
Columbia Falls,  
MT 59912

## Prepared by

Johnson Surveying  
P.O. Box 27  
Clam Gulch, AK 99568  
(907) 262-5772

SCALE 1" = 100'

AREA = 5.764 acres

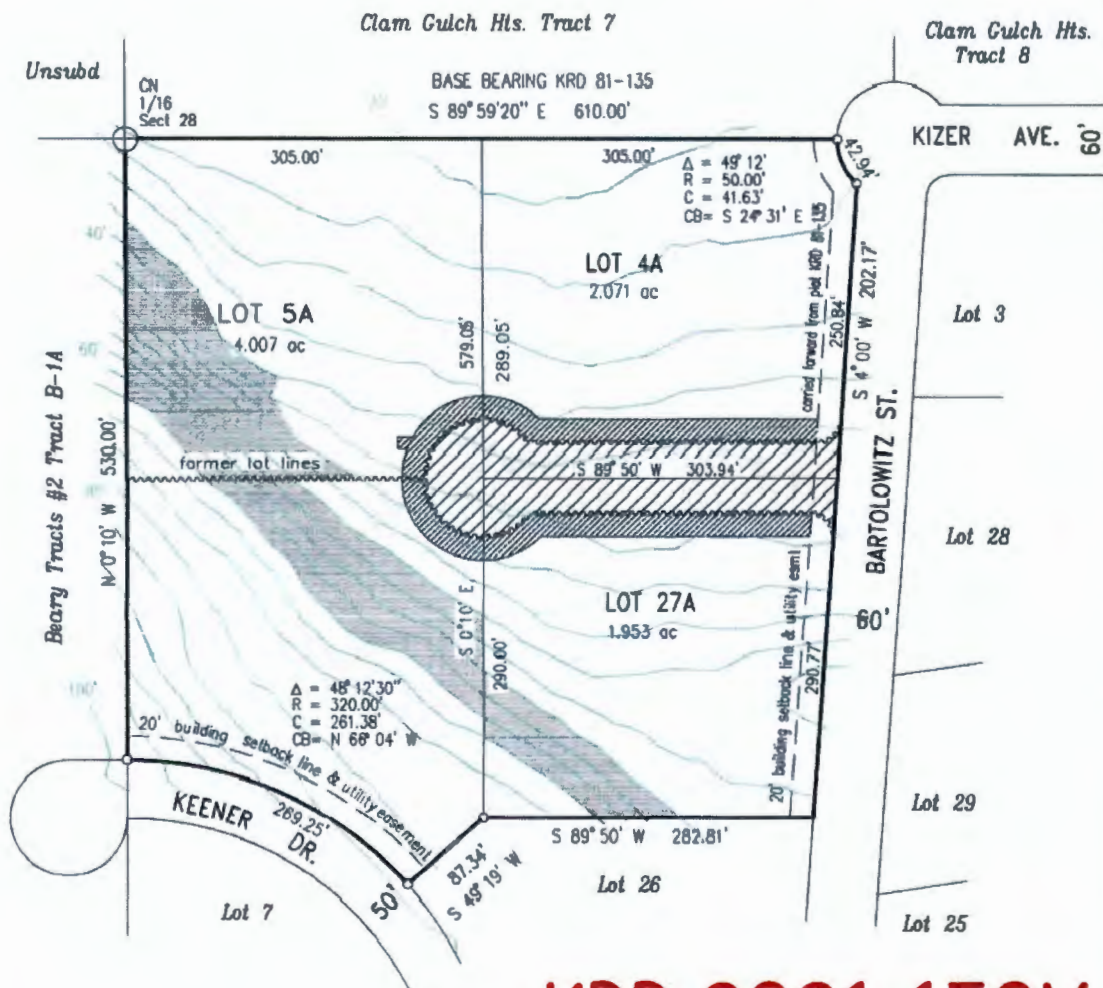
3 August, 2021

- indicates Fauerbach Court ROW being vacated.

- indicates utility & anchor easement being vacated.

## NOTES

1. A building setback of 20' from all street ROWs is required unless a lesser standard is approved by a resolution of the appropriate planning commission. Building setback is also a utility easement as granted by plat KRD 85-135.
2. No permanent structures shall be constructed or placed within a utility easement that would interfere with the ability of a utility to use the easement.
3. Contour interval 4'. Shaded areas are grades over 25%. there are no wet areas on the property.



**KPB 2021-150V**



AGENDA ITEM E.      NEW BUSINESS

**ITEM 3 - FAUERBACH COURT RIGHT OF WAY VACATION AND  
ASSOCIATED UTILITY EASEMENTS AND ANCHOR EASEMENT**

<b>KPB File No.</b>	2021-150V
<b>Planning Commission Meeting:</b>	December 13, 2021
<b>Applicant / Owner:</b>	James E. Glendening of Kenai, Alaska and Daniel John Sims of Columbia Falls, Montana
<b>Surveyor:</b>	Jerry Johnson / Johnson Surveying
<b>General Location:</b>	Russell Avenue, Keener Drive, and Bartolowitz Street / Clam Gulch
<b>Legal Description:</b>	Lots 4, 5, 6 and 27, Clam Gulch Heights Glendening 1979 Subdivision Plat No 81-135

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**STAFF REPORT**

**Specific Request / Purpose as stated in the petition:** Lots are being combined with an associated replat, eliminating the need for this ROW.

**Notification:** Public notice appeared in the December 2, 2021 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the December 9, 2021 issue of the Peninsula Clarion as part of the Commission's tentative agenda.

The public notice was posted on the Planning Commission bulletin board at the Kenai Peninsula Borough George A. Navarre Administration building. Additional notices were mailed to the following with the request to be posted for public viewing.

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Post Office of Clam Gulch

Fourteen certified mailings were sent to owners of property within 600 feet of the proposed vacation. Six receipts had been returned when the staff report was prepared.

Seventeen public hearing notices were emailed to agencies and interested parties as shown below;

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State of Alaska DNR  
State of Alaska DOT  
State of Alaska DNR Forestry  
Central Emergency Services

Ninilchik Traditional Council  
Alaska Communication Systems (ACS)  
ENSTAR Natural Gas  
General Communications Inc, (GCI)  
Homer Electric Association (HEA)

**Legal Access (existing and proposed):** Fauerbach Court a 60 foot wide and 350 feet in length right of way that ends in a cul-de-sac. Fauerbach Court is unconstructed and not maintained by KPB Roads Department. It is located off of Bartolowitz Street, a 60 foot wide right of way that is only partially constructed and not maintained by the borough.

A replat has been submitted that will reconfigure four lots into three. Proposed Lot 4A and 27A will have access via Bartolowitz Street. Lots 5 and 6 will be combined into proposed Lot 5A and will have access from Keener Drive. Keener Drive is a 50 foot wide borough maintained right of way. Both Keener Drive and Bartolowitz Street are located off Russell Avenue, a 60 foot wide borough maintained right of way located near mile 117 of the Sterling Highway.

No new dedications are proposed.

The block is irregular in design. The block does close but the block length exceeds code requirements. Sterling Highway, Russell Avenue, Bartolowitz Street, Kizer Avenue, Glendening Street, and Sesame Avenue define the block. As the right of way proposed for vacation is a cul-de-sac, it does not improve block lengths or help provide a closed block. The vacation will not affect the block requirements.

KPB Roads Dept. comments	Out of Jurisdiction: No  Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	

**Site Investigation:** The right of way and lots adjoining this right of way are not affected by low wet areas. The right of way is free of any steep slopes. There are steep slopes that will divide the newly proposed Lot 5A and access to the northern portion may be more difficult without the right of way. Vacating the right of way may reduce the ability or design options for Lot 5A to be further subdivided.

River Center Review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
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**Staff Analysis:** The subdivision is located in the Clam Gulch area and is not within an advisory planning commission boundary. It is located near mile 117 of the Sterling Highway.

The subject parcels and right of way were originally subdivided by Clam Gulch Heights, Plat KN 72-61. That plat created aliquot description lots. Clam Gulch Heights Glendening 1979 Subdivision, Plat KN 81-135, further subdivided the parcels and dedicated Shady Court. Resolution SN 2005-07 renamed Shady Court to Fauerbach Court.

Fauerbach Court provides the only legal access to Lot 5 and provides a secondary access to Lots 4, 6, and 27. A replat, Clam Gulch Heights 2021 Addition KPB File 2021-150, has been submitted. The proposed plat will combine Lots 5 and 6 into one lot with access from Keener Drive. Lot 4 and Lot 27 will continue to have access via Bartolowitz Street.

A 20 foot building setback was put in place adjoining Fauerbach Court. The parent plat granted the full setback as a utility easement. A 10 foot by 30 foot anchor easement was also granted within Lot 5 along the cul-de-sac, which extends beyond the granted easement by 10 feet. The proposal includes vacating the associated utility easement and the anchor easement. A 20 foot utility easement will be granted along the new lot line boundaries abutting Bartolowitz Street. Review has been sent to the utility companies for comment and staff recommends that requested easements be worked out with the utility companies and be granted.

#### **20.65.050 – Action on vacation application**

D. The planning commission shall consider the merits of each vacation request and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:

1. The right-of-way or public easement to be vacated is being used;  
**Staff comments:** The right of way is currently not constructed and does not appear to be used.
2. A road is impossible or impractical to construct, and alternative access has been provided;  
**Staff comments:** The road is relatively flat and contains no wet lands. Alternative access is provided by previously dedicated right of ways.
3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;  
**Staff comments:** Additional right of ways are in place, as well as utility easements, to provide adequate access and utilities to all surrounding parcels.
4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;  
**Staff comments:** This right of way does not provide access to any water body or area with public interest.
5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;  
**Staff comments:** The proposed vacation will not limit opportunities for interconnectivity with adjacent parcels and adequate right of ways and utility easements have been dedicated.
6. Other public access, other than general road use, exist or are feasible for the right-of-way;  
**Staff comments:** Other public access does not appear to be needed as the cul-de-sac provides access to private property.
7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a utility, shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a utility easement be granted in place of the right-of-way.  
**Staff comments:** Utility easements will be provided that exceed requirements but follows the parent plat dedications. Any requested easements from utility providers shall be worked out with the land owners before final plat approval.
8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.  
**Staff comments:** The right of way provided access to four lots. The reconfiguration proposed will allow all lots to have adequate access.

If approved, the plat Clam Gulch Heights 2021 Addition will finalize the proposed right of way vacations. The Planning Commission is scheduled to review the plat on December 13, 2021. If the vacation is approved, the consent by the Kenai Peninsula Borough Assembly is required. The Assembly must hear the vacation within thirty days of the Planning Commission decision. The Assembly should hear the vacation at their January 4, 2022 meeting.

**KPB department / agency review:**

Planner	
Code Compliance	Reviewer: Ogren, Eric



	Comments: No comments
Addressing	<p>Reviewer: Haws, Derek</p> <p>Affected Addresses:</p> <p>55450 FAUERBACH CT</p> <p>17635 BARTOLOWITZ ST</p> <p>17610 KEENER DR</p> <p>17615 BARTOLOWITZ ST</p> <p>Existing Street Names are Correct: Yes</p> <p>List of Correct Street Names:</p> <p>FAUERBACH CT</p> <p>BARTOLOWITZ ST</p> <p>KEENER DR</p> <p>KIZER AVE</p> <p>Existing Street Name Corrections Needed:</p> <p>All New Street Names are Approved: No</p> <p>List of Approved Street Names:</p> <p>List of Street Names Denied:</p> <p>Comments:</p> <p>55450 FAUERBACH CT will be deleted.</p> <p>17635 BARTOLOWITZ ST will remain with lot 4A.</p> <p>17610 KEENER DR will remain with lot 5A.</p> <p>17615 BARTOLOWITZ ST will remain with lot 27A.</p>
Assessing	<p>Reviewer: Wilcox, Adeena</p> <p>Comments: No comment</p>

**Utility provider review:**

HEA	No comments.
ENSTAR	No comments or objections.
ACS	No objections
GCI	Approved as shown.

**RECOMMENDATION:**

Based on consideration of the merits as per KPB 20.65.050(F) as outlined by Staff comments, Staff recommends **APPROVAL** as petitioned, subject to:

1. Consent by KPB Assembly.
2. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
3. Grant utility easements requested by the utility providers.
4. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).

**KPB 20.65.050 – Action on vacation application**

- H. A planning commission decision to approve a vacation is not effective without the consent of the city council, if the vacated area to be vacated is within a city, or by the assembly in all other cases. The council or assembly shall have 30 days from the date of the planning commission approval to either consent to or veto the vacation. Notice of veto of the vacation shall be immediately given to the planning commission. Failure to act on the vacation within 30 days shall be considered to be consent to the



vacation. This provision does not apply to alterations of utility easements under KPB 20.65.070 which do not require the consent of the assembly or city council unless city code specifically provides otherwise.

- I. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, where applicable, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent.
- J. A planning commission decision denying a vacation application is final. No reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.
- K. An appeal of the planning commission, city council or assembly vacation action under this chapter must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.

The 2019 Kenai Peninsula Borough Comprehensive Plan adopted November, 2019 by Ordinance No. 2019-25. The relevant objectives are listed.

*Goal 3. Preserve and improve quality of life on the Kenai Peninsula Borough through increased access to local and regional facilities, activities, programs and services.*

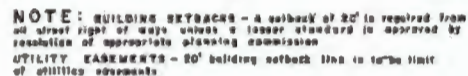
- *Focus Area: Energy and Utilities*
  - o *Objective A - Encourage coordination or residential, commercial, and industrial development with extension of utilities and other infrastructure.*
    - *Strategy 1. Near – Term: Maintain existing easements (especially section line easements) in addition to establishing adequate utility rights of way or easements to serve existing and future utility needs.*
    - *Strategy 2. Near – Term: Maintain regular contact with utility operators to coordinate and review utility easement requests that are part of subdivision plat approval.*
    - *Strategy 3. Near – Term: Identify potential utility routes on Borough lands.*
- *Housing*
  - o *Objective D. Encourage efficient use of land, infrastructure and services outside incorporated cities by prioritizing future growth in the most suitable areas.*
    - *Strategy 1. Near – Term: Collaborate with the AK Department of Transportation, incorporated cities within the borough, utility providers, other agencies overseeing local services, and existing communities located adjacent to the undeveloped areas that are appropriate for future growth, to align plans for future expansion of services to serve future residential development and manage growth.*

*Goal 4. Improve access to, from and connectivity within the Kenai Peninsula Borough*

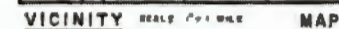
- *Focus Area: Transportation*
  - o *Objective B. Ensure new roads are developed in alignment with existing and planned growth and development.*
    - *Strategy 2. Near – Term: Establish subdivision codes that dictate road construction standards to accommodate future interconnectivity and/or public safety.*
    - *Strategy 3. Near – Term: Identify areas of anticipated growth to determine future access needs.*

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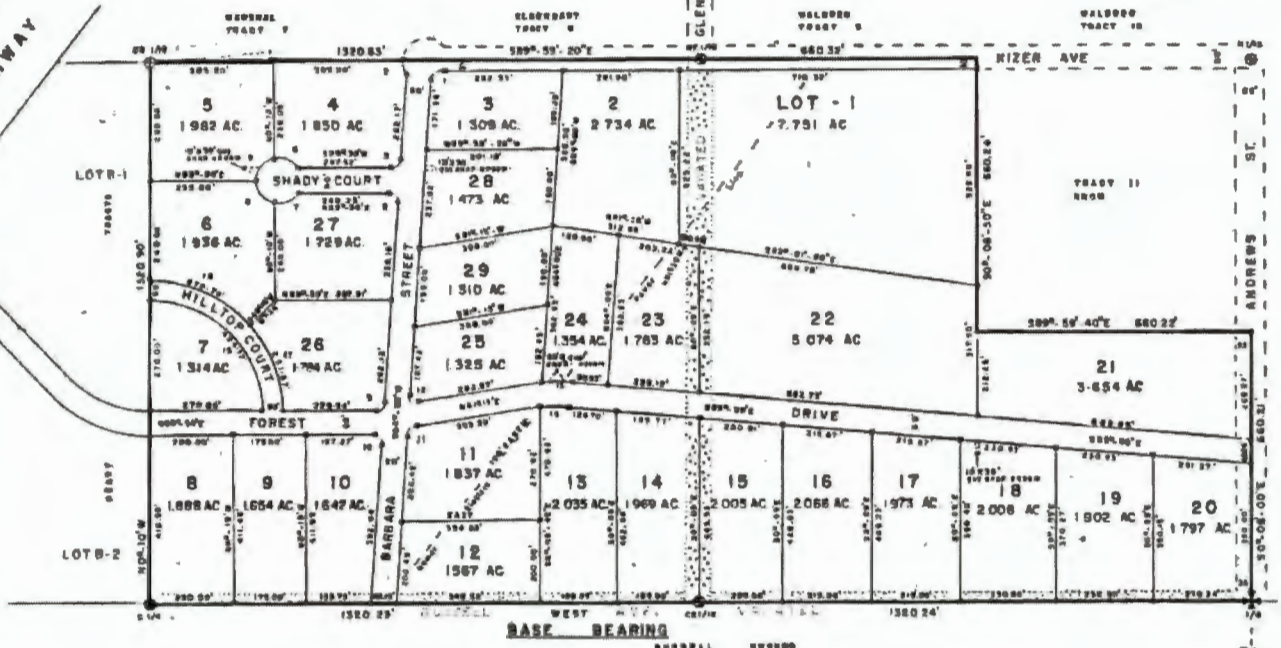
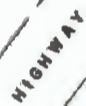
**END OF STAFF REPORT**



81-135  
SEARCHED - INDEXED 10  
Kanan  
10-2-81  
3:48 P  
KPB



- Brass cap removed out by 255-4
- 1978 brass cap removed by 205-3 found
- Brass cap by David Hoffman, found
- 1978 brass cap by G.L.O., found
- 1/2" x 2" round cap.



NEW ZEALAND GULCH, AT 00003

# CLAM GULCH HEIGHTS

IN NE 1/4 SEC. 28, T2N. R12W. S. 4. ;  
CLAM GULCH, ALASKA.

EAST 61.77 160 AC. ±

**VICINITY MAP 1"=1/4 MI.**  
21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

**NOTE:**

TRACTS DESC. BY ALIQUOT PARTS INCL. STREET AREAS.

8-IND. BRASS CAP MON. 1-IND. 1/2" X 24" REBAR.

BY JAMES & DELLA KIZER  
CLAM GULCH, ALASKA.

KENAD PENNSILVA 18711111  
Planning Commission  
Approved OCTOBER 30, 1972  
By Stanley F. Thompson

<p>28</p> <p>5</p> <p>3</p> <p>7.454 AC.</p> <p>030.50</p> <p>SE 1/4 NW 1/4 NE 1/4 10 AC. ±</p> <p>7</p> <p>6.029 AC.</p> <p>8</p> <p>SE 1/4 NW 1/4 NE 1/4 10 AC. ±</p> <p>14</p> <p>NW 1/4 SW 1/4 NE 1/4 10 AC. ±</p> <p>15</p> <p>SW 1/4 SW 1/4 NE 1/4 10 AC. ±</p>	<p>29</p> <p>2</p> <p>NW 1/4 NE 1/4 NE 1/4 10 AC. ±</p> <p>9</p> <p>SW 1/4 NE 1/4 NE 1/4 10 AC. ±</p> <p>10</p> <p>SE 1/4 NE 1/4 NE 1/4 10 AC. ±</p> <p>13</p> <p>NE 1/4 SW 1/4 NE 1/4 10 AC. ±</p> <p>16</p> <p>SE 1/4 SW 1/4 NE 1/4 10 AC. ±</p>	<p>30</p> <p>1</p> <p>NE 1/4 NE 1/4 NE 1/4 10 AC. ±</p> <p>11</p> <p>NE 1/4 SE 1/4 NE 1/4 10 AC. ±</p> <p>12</p> <p>NW 1/4 SE 1/4 NE 1/4 10 AC. ±</p> <p>17</p> <p>SW 1/4 SE 1/4 NE 1/4 10 AC. ±</p> <p>18</p> <p>SE 1/4 SE 1/4 NE 1/4 10 AC. ±</p>	<p>31</p> <p>4</p> <p>SE 1/4 NE 1/4 NE 1/4 10 AC. ±</p> <p>6</p> <p>SE 1/4 NE 1/4 NE 1/4 10 AC. ±</p> <p>1</p> <p>NE 1/4 NE 1/4 NE 1/4 10 AC. ±</p>
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WEST 2640.2

CERTIFICATE OF OWNERSHIP AND DECLARATION

We 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 streets to public use and to the use of public utilities.

(Owner James & Della Kizer) (Owner Della A. Kizer) 72-61

STATE OF ALASKA

NOTARY PUBLIC

Subscribed and sworn before me this 1 day of

My commission expires 12-1-75

NOTARY PUBLIC FOR ALASKA

Clam Gulch Heights  
T 2 N, R 12 W, S. 4.

**RECORDED - FILED**

Kenai REC. DIST.

NOV 1 1972

11/3 1972

K09 A

KPB

49280

19-26 NY



# Kenai Peninsula Borough

## Planning Department

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### MEMORANDUM

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

**FROM:** Melanie Aeschliman, Planning Director *MA*

**DATE:** December 15, 2021

**RE:** Right-of-way Vacation: Koto Court right-of-way vacation and associated utility easements, Murray Subdivision Buck Addition, KPB File 2021-154V.

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In accordance with AS 29.40.140, no vacation of a Borough right-of-way and/or easement may be made without the consent of the Borough Assembly.

During their regularly scheduled meeting of December 13, 2021 the Kenai Peninsula Borough Planning Commission granted approval of the above proposed vacation of by unanimous vote based on the means of evaluating public necessity established by KPB 20.65 (5-Yes, 0-No, 3 Absent, 3-Vacant) This petition is being sent to you for your consideration and action.

A draft copy of the unapproved minutes of the pertinent portion of the meeting and other related materials are attached.

December 13, 2021 Planning Commission Draft Meeting Minutes  
December 13, 2021 Agenda Item E6 Meeting Packet



## **PETITIONER CONTACT INFORMATION**

**Marshall W. Martin  
36075 Murray Lane  
Soldotna, AK 99669**

**No Email Address Available**

### ITEM 6 - KOTO COURT RIGHT OF WAY VACATION AND ASSOCIATED UTILITY EASEMENTS

<b>KPB File No.</b>	2021-154V
<b>Planning Commission Meeting:</b>	December 13, 2021
<b>Applicant / Owner:</b>	Marshall Martin of Soldotna, Alaska
<b>Surveyor:</b>	John Segesser / Segesser Surveys, Inc.
<b>General Location:</b>	Murray Lane, Sterling area
<b>Legal Description:</b>	Lots B1 AND B2 Murray Subdivision Buck Addition, Plat KN 2017-59

Staff report given by Scott Huff.

**Specific Request / Purpose as stated in the petition:** My client, Marshall Martin, wants to vacate the line between Lots B1 and B2 and include the vacation of Koto Court. Koto Court was dedicated to provide legal access to Lot B2 and does not provide access to the adjoining property.

**Notification:** Public notice appeared in the December 2, 2021 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the December 9, 2021 issue of the Peninsula Clarion as part of the Commission's tentative agenda.

The public notice was posted on the Planning Commission bulletin board at the Kenai Peninsula Borough George A. Navarre Administration building. Additional notices were mailed to the following with the request to be posted for public viewing.

Library of Soldotna

Post Office of Sterling

Twenty-five certified mailings were sent to owners of property within 300 feet of the proposed vacation. Eleven receipts had been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to 20 owners within 600 feet of the proposed vacation.

Seventeen public hearing notices were mailed to agencies and interested parties as shown below:

State of AK Dept. of Fish & Game  
State of AK DNR  
State of AK DOT  
State of AK DNR Forestry  
Central Emergency Services

Ninilchik Traditional Council  
Alaska Communication Systems (ACS)  
ENSTAR Natural Gas  
General Communications Inc. (GCI)  
Homer Electric Association (HEA)

**Legal Access (existing and proposed):** The proposed vacation is for Koto Court, a 60 foot wide right of way that is approximately 275 feet long and ends with a cul-de-sac. Koto Court is currently unconstructed and not maintained. Three lots abut Koto Court, Lots B1 and B2 of Murray Subdivision Buck Addition, KN 2017-59, and Lot 2D of Murray Subdivision Reed Addition, KN 2003-17.

If approved, Murry Lane will be the legal access for Lot 2D as well as proposed Lot B1A. Lot B1A will be the combined parcels of Lot B1 and Lot B2.

Murray Lane is a dedicated right of way with varying width. The portion abutting the area included in the petition is 100 foot wide. Murray Lane is constructed and maintained by the State of Alaska. Murray Lane connects to the Sterling Highway near mile post 89.

No new dedications are proposed. Lot 2D, adjoining the north boundary of Koto Court, has a driveway to Murray Lane.

The block is not closed and is not compliant. Murray Lane, Dudley Avenue, Dayspring Street, and Hallelujah Drive define the block. A vacation has removed the section line easements that would have provided a closed and compliant block. Murray Lane ends at an intersection with Lakeshore Drive while Hallelujah Drive ends at a lot. This block is bordered by Longmere Lake and the ability to get a closed block will be difficult due to existing structures and low wet areas. The distance along Dayspring Street exceed allowable

lengths. When the plat is reviewed, staff will request that the plat committee concur that an exception to block length requirements is not required as this subdivision will not be able to provide any dedications to improve the block length. Koto Court is a cul-de-sac and by KPB code definitions is to be permanently closed. Approval or denial of the vacation of Koto Court will not affect block compliance.

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	DOT ROW Engineering has no comments.

**Site Investigation:** The right of way area and the lots abutting do not contain any low wet areas. Steep slopes are not present.

River Center Review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
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**Staff Analysis:** Koto Court was dedicated on Murray Subdivision Buck Addition, Plat KN 2017-59. That plat dedicated the right of way and created the current lot configurations for Lots B1 and B2. The land within this proposal has been part of past subdivisions starting with the creation of a 16 acre tract with Murray Tract "A", Plat KN 76-26. Several subdivisions that subdivided that original Tract A and then lot reconfigurations have occurred until Plat KN 2017-59 created the current configuration.

Murray Subdivision Buck Addition, Plat KN 2017-59, dedicated Koto Court as a 60 foot wide cul-de-sac. Three lots abut the right of way, Lot 2D of Murray Subdivision Reed Addition (Plat KN 2003-17), and Lot B1 and Lot B2 of Murray Subdivision Buck Addition.

Murray Subdivision Buck Addition, Plat KN 2017-59, granted 15 foot utility easements along dedicated right of ways. The proposed vacation includes the associated utility easements. All utility easements along the Koto Court dedication will be vacated. A 15 foot wide utility easement adjoining Murray Lane will remain in place including the area within the vacated Koto Court right of way.

Murray Subdivision Replat of Lot 2 and Martin 1986 Subdivision of Tract A-1 and Replat of Tract D, Plat KN 88-38, granted a 20 foot utility easement centered on the common boundary of Lot 2D and former Lot 5D. This 10 foot utility easement was carried forward on Murray Subdivision Martin Addition No. 2, Plat KN 2007-85, and Murray Subdivision Martin Addition No. 3, Plat KN 2013-124. The dedication of Koto Court was atop the utility easement. Utilities within a right of way are allowable with the correct permitting.

This application requests all associated utility easements to be vacated and that would include the easement granted by Plat KN 88-38 located on the north 10 feet of Koto Ct. If the owners wish to leave that easement intact or a utility provider requests the easement remain, it must be depicted and noted. **Staff recommends** that a plat note be added that states, 'The 10 foot utility easement granted per KN 88-38, where located within Koto Court, will be vacated with the recording of this plat.'

The proposed vacation is not within an advisory planning commission boundary.

#### 20.65.050 – Action on vacation application



- D. The planning commission shall consider the merits of each vacation request and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:
1. The right-of-way or public easement to be vacated is being used;  
**Staff comments:** The right of way is not constructed and does not appear to be used.
  2. A road is impossible or impractical to construct, and alternative access has been provided;  
**Staff comments:** Koto Court is possible to construct as it is not affected by steep terrain or wetlands. No alternative access is proposed as all lots, and proposed lots, abutting Koto Court will have access via Murray Lane.
  3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;  
**Staff comments:** The area has been subdivided with all sufficient right of way dedications to provide legal access to all parcels.
  4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;  
**Staff comments:** The right of way does not provide access to any public interest area or water body.
  5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;  
**Staff comments:** This is a cul-de-sac with no intention to be further extended and will not limit interconnectivity.
  6. Other public access, other than general road use, exist or are feasible for the right-of-way;  
**Staff comments:** Other use is not needed. The current right of way provides access to private lands and does not connect to any public lands or provide connection to walkways or pedestrian easements.
  7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a utility, shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a utility easement be granted in place of the right-of-way.  
**Staff comments:** 15 foot wide utility easements will remain along Murray Lane. The 10 foot utility easement per KN 88-38, where located within Koto Court, will be vacated with this platting action. The utility providers did not request any additional utility easement.
  8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.  
**Staff comments:** The proposed lot configuration will provide that all lots front on a dedicated right of way.

A KPB Planning Commission decision denying a vacation application is final. A KPB Planning Commission decision to approve the vacation application is subject to consent or veto by the KPB Assembly, or City Council if located within City boundaries. The KPB Assembly, or City Council must hear the vacation within thirty days of the Planning Commission decision.

The Assembly or City Council will hear the vacation at their scheduled January 4, 2022 meeting.

If approved, a subdivision plat will finalize the proposed right of way vacations. A preliminary plat has not been submitted at this time.



**KPB department / agency review:**

Planner	
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Addressing	Reviewer: Haws, Derek Affected Addresses: None  Existing Street Names are Correct: Yes List of Correct Street Names: SEWARD AVE LENORA CT DAYSRING ST MURRAY LN KOTO CT  Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied:  Comments: No addresses affected.
Assessing	Reviewer: Wilcox, Adeena Comments: No comment

**Utility provider review:**

HEA	No comments
ENSTAR	No comments or objections
ACS	
GCI	Approved as shown

**RECOMMENDATION:**

Based on consideration of the merits as per KPB 20.65.050(F) as outlined by Staff comments, Staff recommends APPROVAL as petitioned, subject to:

9. Consent by KPB Assembly.
10. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
11. Grant utility easements requested by the utility providers.
12. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).

**KPB 20.65.050 – Action on vacation application**

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*Goal 4. Improve access to, from and connectivity within the Kenai Peninsula Borough*

- *Focus Area: Transportation*
  - o *Objective B. Ensure new roads are developed in alignment with existing and planned growth and development.*
    - *Strategy 2. Near – Term: Establish subdivision codes that dictate road construction standards to accommodate future interconnectivity and/or public safety.*
    - *Strategy 3. Near – Term: Identify areas of anticipated growth to determine future access needs.*

**END OF STAFF REPORT**

Vice Chair Ruffner opened the meeting for public comment. Hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

**MOTION:** Commissioner Venuti moved, seconded by Commissioner Brantley to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.65, subject to staff recommendations and compliance with borough code.

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

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes	5	Absent	3	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Morgan, Ruffner, Venuti				
Absent	Fikes, Gillham, Martin				

## **DECEMBER 13, 2021 PC MEETING INFORMATION**

### **E. NEW BUSINESS**

#### **6. Right-of-Way Vacation; KPB 2021-154V**

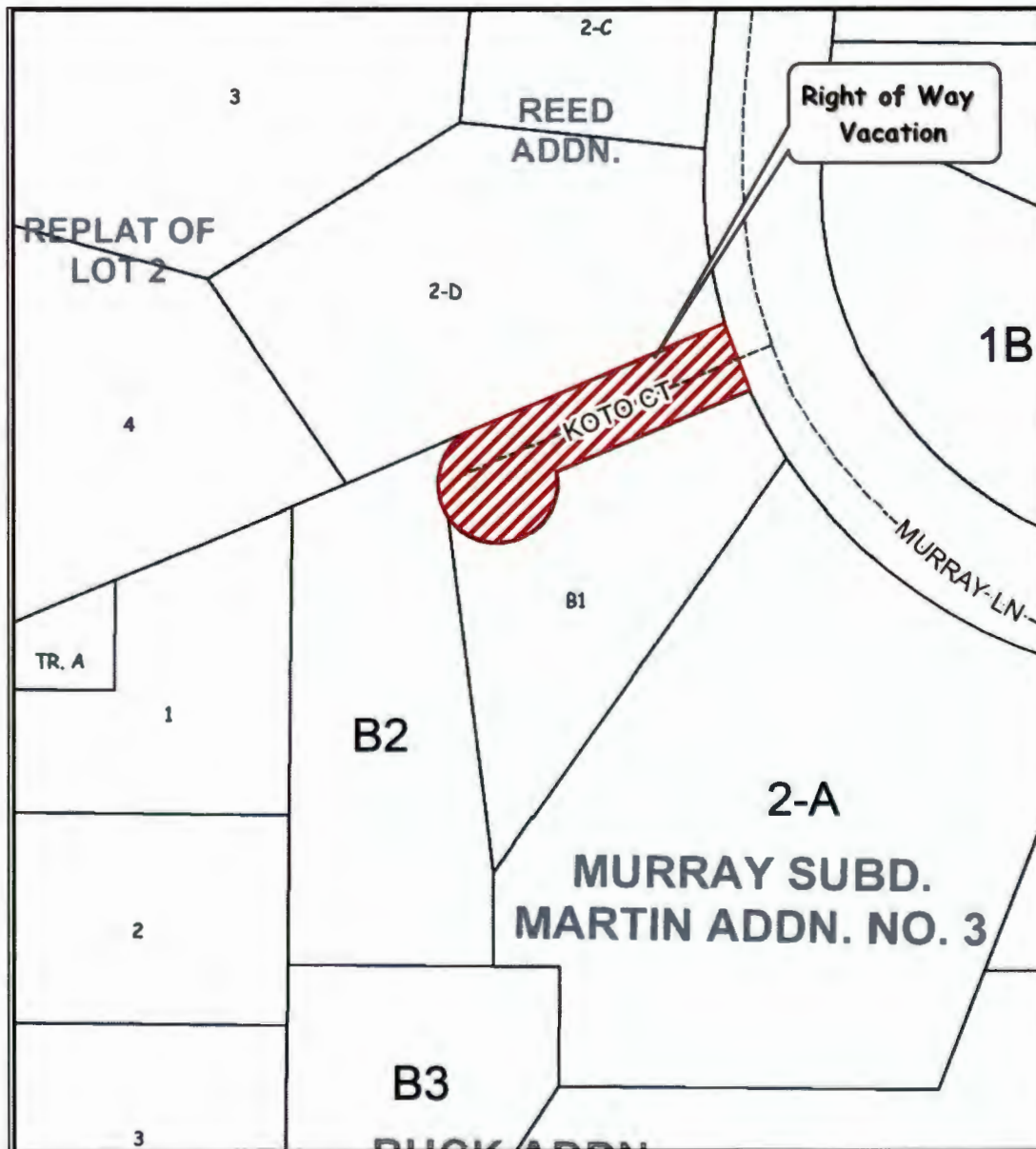
**Request: Vacate Koto Court cul-de-sac and associated utility easements within Lots B1 & B2, Murray Subdivision Buck Addition (Plat KN 2017-59)**

**Surveyor: Segesser Surveys**

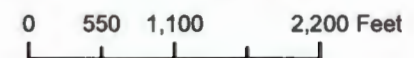
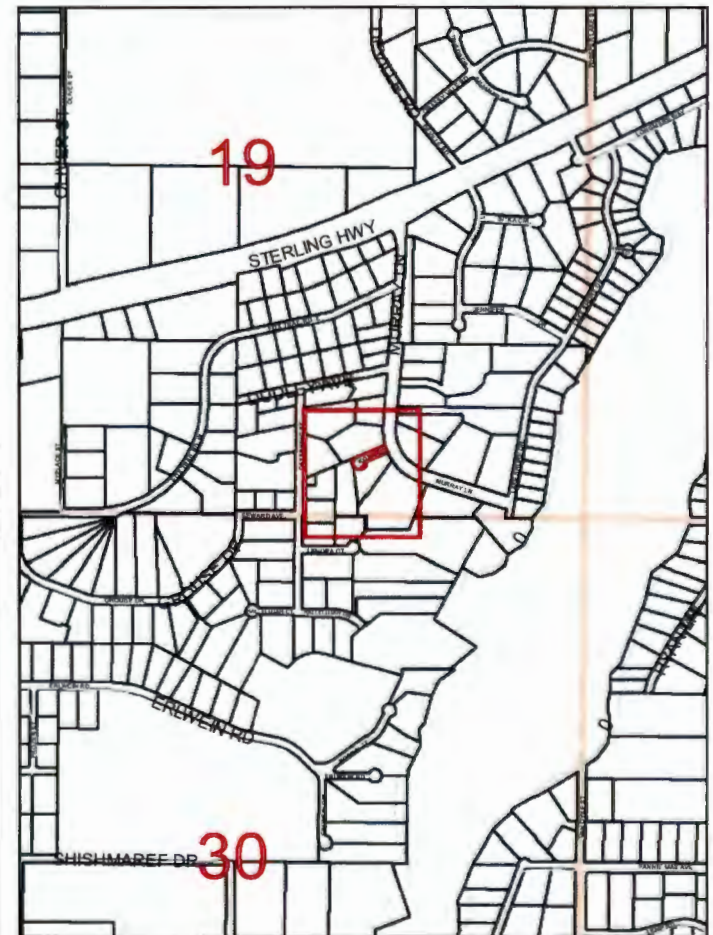
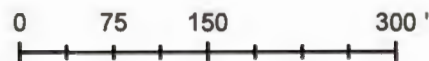
**Petitioner: Marshall W. Martin of Soldotna, AK**

**Sterling Area**





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



**KPB 2021-154V**  
**S19 T05N R09W**  
**Sterling**

PClements, KPB 2021-154V Date: 11/19/2021





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.

0 50 100 200'

Aerial View



 Right of Way Vacation

PClements, KPB 2021-154V  
Imagery Sterling 2018



**LEGEND:**

- 2 1/2" BRASS, CAP W/IN, GLO 1000 RECORD  
 • 1/2" REBAR RECORD  
 ( ) RECORD DATUM PLAT 2017-22 KRD

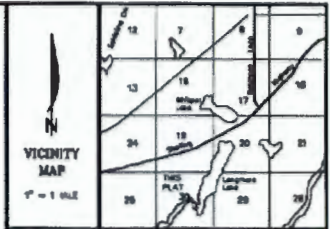
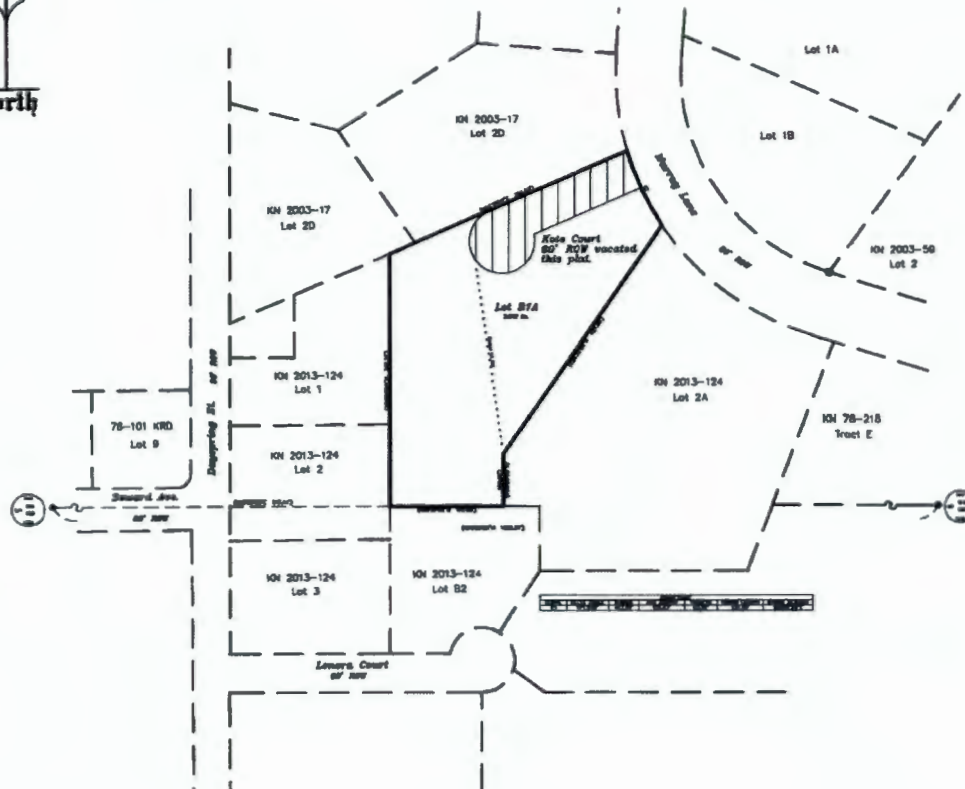
**NOTES:**

- 1) This is a paper plat. A field survey was not performed in accordance with AS 25.63.300(A).
- 2) Date of issuing notice from Murray Subdivision Book Addition, Plat 2017-22, Record Recording District.
- 3) Building Setback-A setback of 20 feet is required from all street right-of-way. They unless a better standard is approved by resolution by the appropriate Planning Commission.
- 4) The location of Kate Court was approved by the Planning Commission at the meeting of 2022.
- 5) Front 15 feet adjacent to right-of-way and 20 feet within 5 feet of the side lot line is a utility easement per AS 2017-22. No permanent structures shall be constructed or placed within a utility easement which would interfere with the ability of a utility to use the easement.
- 6) **WATERWATER DISPOSAL:** The permit application for lots resulting from this platting action was approved by the State Parks and Borough on November 3, 2017. Waterwater treatment and disposal systems must meet the regulatory requirements of the State Department of Environmental Conservation.

**SURVEYOR'S CERTIFICATE**

I hereby certify that I am properly registered and licensed to practice land surveying in the State of Alaska. This plat represents a survey made by me or under my direct supervision, the measurements shown herein actually made or derived, and of dimensions and other details are correct.

Date \_\_\_\_\_

**CERTIFICATE of OWNERSHIP and DEDICATION**

I HEREBY CERTIFY THAT I AM THE OWNER OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON AND THAT I HEREBY ACCEPT THIS PLAN OF SUBDIVISION AND BY MY FINE CONSENT DEDICATE ALL RIGHTS-OF-WAY AND PUBLIC AREAS TO PUBLIC USE AND GRANT ALL EASEMENTS TO THE USE SHOWN.

MARSHALL W. MARTIN  
 38076 MURRAY LANE  
 MOOREHEAD, ALABAMA 36555

**NOTARY'S ACKNOWLEDGEMENT**

FOR \_\_\_\_\_  
 ACKNOWLEDGED BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_

NOTARY PUBLIC FOR ALASKA  
 MY COMMISSION EXPIRES \_\_\_\_\_

**PLAT APPROVAL**

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF \_\_\_\_\_

KENAI PENINSULA BOROUGH

AUTHORIZED OFFICIAL

KPB FILE No. \_\_\_\_\_

**Murray Subdivision 2022 Replat**

A replatting of Lots 21 and 22 Murray Subdivision Book Addition, Plat 2017-22, Record Recording District, and the location of Kate Court.

Located within the SW 1/4 NE 1/4 Section 10, T2N, R2E, S1E, Kenai Peninsula Borough, Alaska.

Containing maps as:

Surveyor	Owner
Segesser Surveys 30485 Railroad St. Soldotna, AK 99686 (907) 262-0909	Marshall W. Martin 38076 Murray Lane Moorehead, AK 36555
JOB NO. 2319	DRAWN 11-18-21
SURVEYED N/A	SCALE 1"=50'
FIELD BOOK N/A	SHEET 1 of 1

**KPB 2021-154V**

AGENDA ITEM E. NEW BUSINESS

**ITEM 6 - KOTO COURT RIGHT OF WAY VACATION  
AND ASSOCIATED UTILITY EASEMENTS**

<b>KPB File No.</b>	2021-154V
<b>Planning Commission Meeting:</b>	December 13, 2021
<b>Applicant / Owner:</b>	Marshall Martin of Soldotna, Alaska
<b>Surveyor:</b>	John Segesser / Segesser Surveys, Inc.
<b>General Location:</b>	Murray Lane, Sterling area
<b>Legal Description:</b>	Lots B1 AND B2 Murray Subdivision Buck Addition, Plat KN 2017-59

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**STAFF REPORT**

**Specific Request / Purpose as stated in the petition:** My client, Marshall Martin, wants to vacate the line between Lots B1 and B2 and include the vacation of Koto Court. Koto Court was dedicated to provide legal access to Lot B2 and does not provide access to the adjoining property.

**Notification:** Public notice appeared in the December 2, 2021 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the December 9, 2021 issue of the Peninsula Clarion as part of the Commission's tentative agenda.

The public notice was posted on the Planning Commission bulletin board at the Kenai Peninsula Borough George A. Navarre Administration building. Additional notices were mailed to the following with the request to be posted for public viewing.

Library of Soldotna                      Post Office of Sterling

Twenty-five certified mailings were sent to owners of property within 300 feet of the proposed vacation. Eleven receipts had been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to 20 owners within 600 feet of the proposed vacation.

Seventeen public hearing notices were emailed to agencies and interested parties as shown below;

State of Alaska Dept. of Fish and Game  
State of Alaska DNR  
State of Alaska DOT  
State of Alaska DNR Forestry  
Central Emergency Services  
Ninilchik Traditional Council

Alaska Communication Systems (ACS)  
ENSTAR Natural Gas  
General Communications Inc. (GCI)  
Homer Electric Association (HEA)

**Legal Access (existing and proposed):** The proposed vacation is for Koto Court, a 60 foot wide right of way that is approximately 275 feet long and ends with a cul-de-sac. Koto Court is currently unconstructed and not maintained. Three lots abut Koto Court, Lots B1 and B2 of Murray Subdivision Buck Addition, KN 2017-59, and Lot 2D of Murray Subdivision Reed Addition, KN 2003-17.

If approved, Murry Lane will be the legal access for Lot 2D as well as proposed Lot B1A. Lot B1A will be the combined parcels of Lot B1 and Lot B2.

Murray Lane is a dedicated right of way with varying width. The portion abutting the area included in the petition is 100 foot wide. Murray Lane is constructed and maintained by the State of Alaska. Murray Lane connects to the Sterling Highway near mile post 89.

No new dedications are proposed. Lot 2D, adjoining the north boundary of Koto Court, has a driveway to Murray Lane.

The block is not closed and is not compliant. Murray Lane, Dudley Avenue, Dayspring Street, and Hallelujah Drive define the block. A vacation has removed the section line easements that would have provided a closed and compliant block. Murray Lane ends at an intersection with Lakeshore Drive while Hallelujah Drive ends at a lot. This block is bordered by Longmere Lake and the ability to get a closed block will be difficult due to existing structures and low wet areas. The distance along Dayspring Street exceed allowable lengths. When the plat is reviewed, staff will request that the plat committee concur that an exception to block length requirements is not required as this subdivision will not be able to provide any dedications to improve the block length. Koto Court is a cul-de-sac and by KPB code definitions is to be permanently closed. Approval or denial of the vacation of Koto Court will not affect block compliance.

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	DOT ROW Engineering has no comments.

**Site Investigation:** The right of way area and the lots abutting do not contain any low wet areas. Steep slopes are not present.

River Center Review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
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**Staff Analysis:** Koto Court was dedicated on Murray Subdivision Buck Addition, Plat KN 2017-59. That plat dedicated the right of way and created the current lot configurations for Lots B1 and B2. The land within this proposal has been part of past subdivisions starting with the creation of a 16 acre tract with Murray Tract "A", Plat KN 76-26. Several subdivisions that subdivided that original Tract A and then lot reconfigurations have occurred until Plat KN 2017-59 created the current configuration.

Murray Subdivision Buck Addition, Plat KN 2017-59, dedicated Koto Court as a 60 foot wide cul-de-sac. Three lots abut the right of way, Lot 2D of Murray Subdivision Reed Addition (Plat KN 2003-17), and Lot B1 and Lot B2 of Murray Subdivision Buck Addition.

Murray Subdivision Buck Addition, Plat KN 2017-59, granted 15 foot utility easements along dedicated right of ways. The proposed vacation includes the associated utility easements. All utility easements along the Koto Court dedication will be vacated. A 15 foot wide utility easement adjoining Murray Lane will remain in place including the area within the vacated Koto Court right of way.



Murray Subdivision Replat of Lot 2 and Martin 1986 Subdivision of Tract A-1 and Replat of Tract D, Plat KN 88-38, granted a 20 foot utility easement centered on the common boundary of Lot 2D and former Lot 5D. This 10 foot utility easement was carried forward on Murray Subdivision Martin Addition No. 2, Plat KN 2007-85, and Murray Subdivision Martin Addition No. 3, Plat KN 2013-124. The dedication of Koto Court was atop the utility easement. Utilities within a right of way are allowable with the correct permitting.

This application requests all associated utility easements to be vacated and that would include the easement granted by Plat KN 88-38 located on the north 10 feet of Koto Ct. If the owners wish to leave that easement intact or a utility provider requests the easement remain, it must be depicted and noted. **Staff recommends that a plat note be added that states, 'The 10 foot utility easement granted per KN 88-38, where located within Koto Court, will be vacated with the recording of this plat.'**

The proposed vacation is not within an advisory planning commission boundary.

#### **20.65.050 – Action on vacation application**

- D. The planning commission shall consider the merits of each vacation request and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:
1. The right-of-way or public easement to be vacated is being used;  
**Staff comments:** The right of way is not constructed and does not appear to be used.
  2. A road is impossible or impractical to construct, and alternative access has been provided;  
**Staff comments:** Koto Court is possible to construct as it is not affected by steep terrain or wetlands. No alternative access is proposed as all lots, and proposed lots, abutting Koto Court will have access via Murray Lane.
  3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;  
**Staff comments:** The area has been subdivided with all sufficient right of way dedications to provide legal access to all parcels.
  4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;  
**Staff comments:** The right of way does not provide access to any public interest area or water body.
  5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;  
**Staff comments:** This is a cul-de-sac with no intention to be further extended and will not limit interconnectivity.
  6. Other public access, other than general road use, exist or are feasible for the right-of-way;  
**Staff comments:** Other use is not needed. The current right of way provides access to private lands and does not connect to any public lands or provide connection to walkways or pedestrian easements.
  7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a utility, shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a utility easement be granted in place of the right-of-way.

**Staff comments:** 15 foot wide utility easements will remain along Murray Lane. The 10 foot utility easement per KN 88-38, where located within Koto Court, will be vacated with this platting action. The utility providers did not request any additional utility easement.

8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.

**Staff comments:** The proposed lot configuration will provide that all lots front on a dedicated right of way.

A KPB Planning Commission decision denying a vacation application is final. A KPB Planning Commission decision to approve the vacation application is subject to consent or veto by the KPB Assembly, or City Council if located within City boundaries. The KPB Assembly, or City Council must hear the vacation within thirty days of the Planning Commission decision.

The Assembly or City Council will hear the vacation at their scheduled January 4, 2022 meeting.

If approved, a subdivision plat will finalize the proposed right of way vacations. A preliminary plat has not been submitted at this time.

**KPB department / agency review:**

Planner	
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Addressing	Reviewer: Haws, Derek Affected Addresses: None  Existing Street Names are Correct: Yes List of Correct Street Names: SEWARD AVE LENORA CT DAYSPRING ST MURRAY LN KOTO CT  Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied:  Comments: No addresses affected.
Assessing	Reviewer: Wilcox, Adeena Comments: No comment

**Utility provider review:**

HEA	No comments
ENSTAR	No comments or objections
ACS	
GCI	Approved as shown

**RECOMMENDATION:**

Based on consideration of the merits as per KPB 20.65.050(F) as outlined by Staff comments, Staff recommends APPROVAL as petitioned, subject to:

1. Consent by KPB Assembly.
  2. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
  3. Grant utility easements requested by the utility providers.
  4. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).
- 

#### **KPB 20.65.050 – Action on vacation application**

- H. A planning commission decision to approve a vacation is not effective without the consent of the city council, if the vacated area to be vacated is within a city, or by the assembly in all other cases. The council or assembly shall have 30 days from the date of the planning commission approval to either consent to or veto the vacation. Notice of veto of the vacation shall be immediately given to the planning commission. Failure to act on the vacation within 30 days shall be considered to be consent to the vacation. This provision does not apply to alterations of utility easements under KPB 20.65.070 which do not require the consent of the assembly or city council unless city code specifically provides otherwise.**
- I. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, where applicable, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent.**
- J. A planning commission decision denying a vacation application is final. No reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.**
- K. An appeal of the planning commission, city council or assembly vacation action under this chapter must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.**

The 2019 Kenai Peninsula Borough Comprehensive Plan adopted November, 2019 by Ordinance No. 2019-25. The relevant objectives are listed.

*Goal 3. Preserve and improve quality of life on the Kenai Peninsula Borough through increased access to local and regional facilities, activities, programs and services.*

- *Focus Area: Energy and Utilities*
  - o *Objective A - Encourage coordination or residential, commercial, and industrial development with extension of utilities and other infrastructure.*
    - *Strategy 1. Near – Term: Maintain existing easements (especially section line easements) in addition to establishing adequate utility rights of way or easements to serve existing and future utility needs.*
    - *Strategy 2. Near – Term: Maintain regular contact with utility operators to coordinate and review utility easement requests that are part of subdivision plat approval.*
    - *Strategy 3. Near – Term: Identify potential utility routes on Borough lands.*
- *Housing*
  - o *Objective D. Encourage efficient use of land, infrastructure and services outside incorporated cities by prioritizing future growth in the most suitable areas.*
    - *Strategy 1. Near – Term: Collaborate with the AK Department of Transportation, incorporated cities within the borough, utility providers, other agencies overseeing local services, and existing communities located adjacent to the undeveloped areas*

*that are appropriate for future growth, to align plans for future expansion of services to serve future residential development and manage growth.*

*Goal 4. Improve access to, from and connectivity within the Kenai Peninsula Borough*

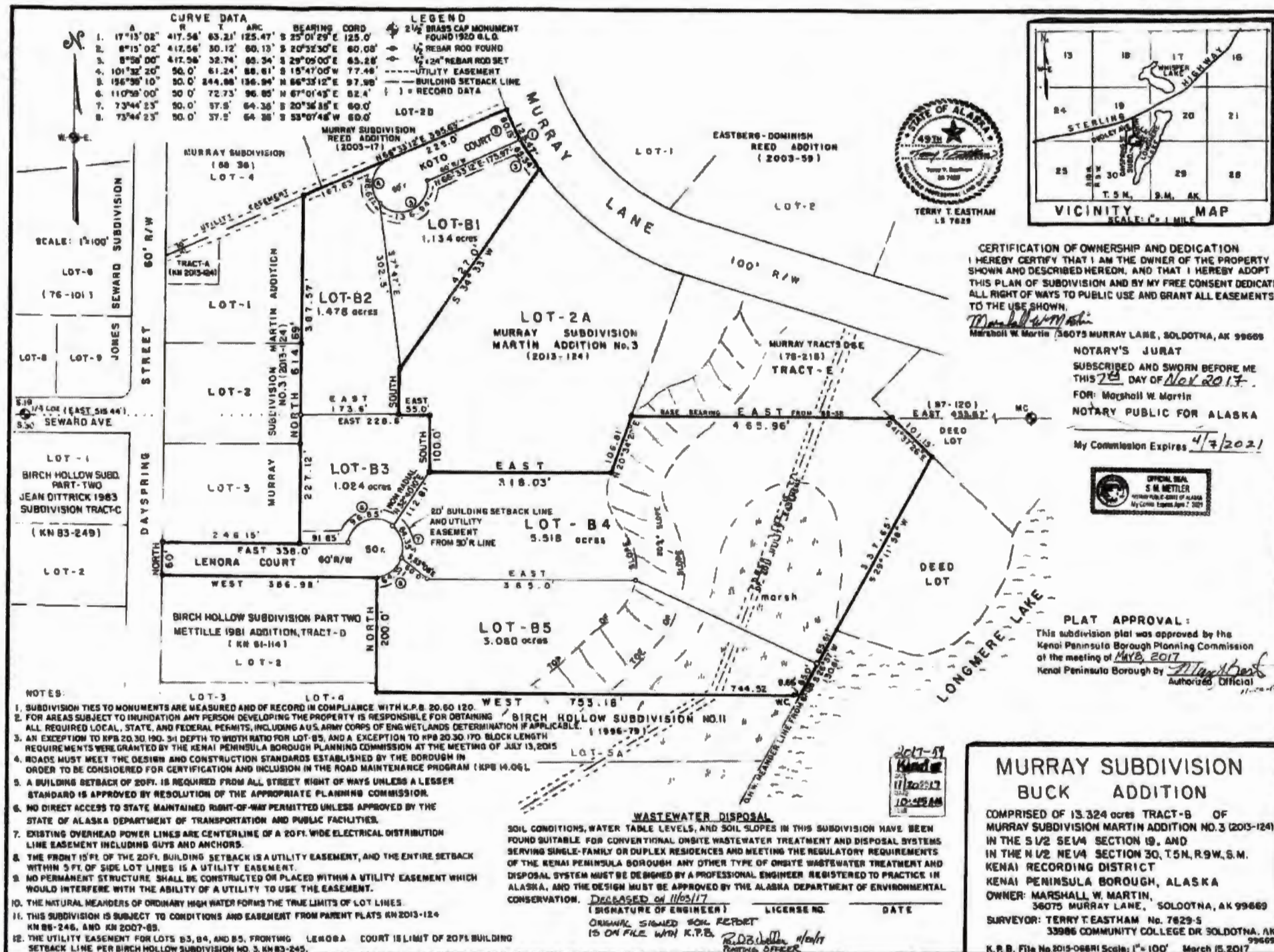
*- Focus Area: Transportation*

- o Objective B. Ensure new roads are developed in alignment with existing and planned growth and development.*
  - Strategy 2. Near – Term: Establish subdivision codes that dictate road construction standards to accommodate future interconnectivity and/or public safety.*
  - Strategy 3. Near – Term: Identify areas of anticipated growth to determine future access needs.*

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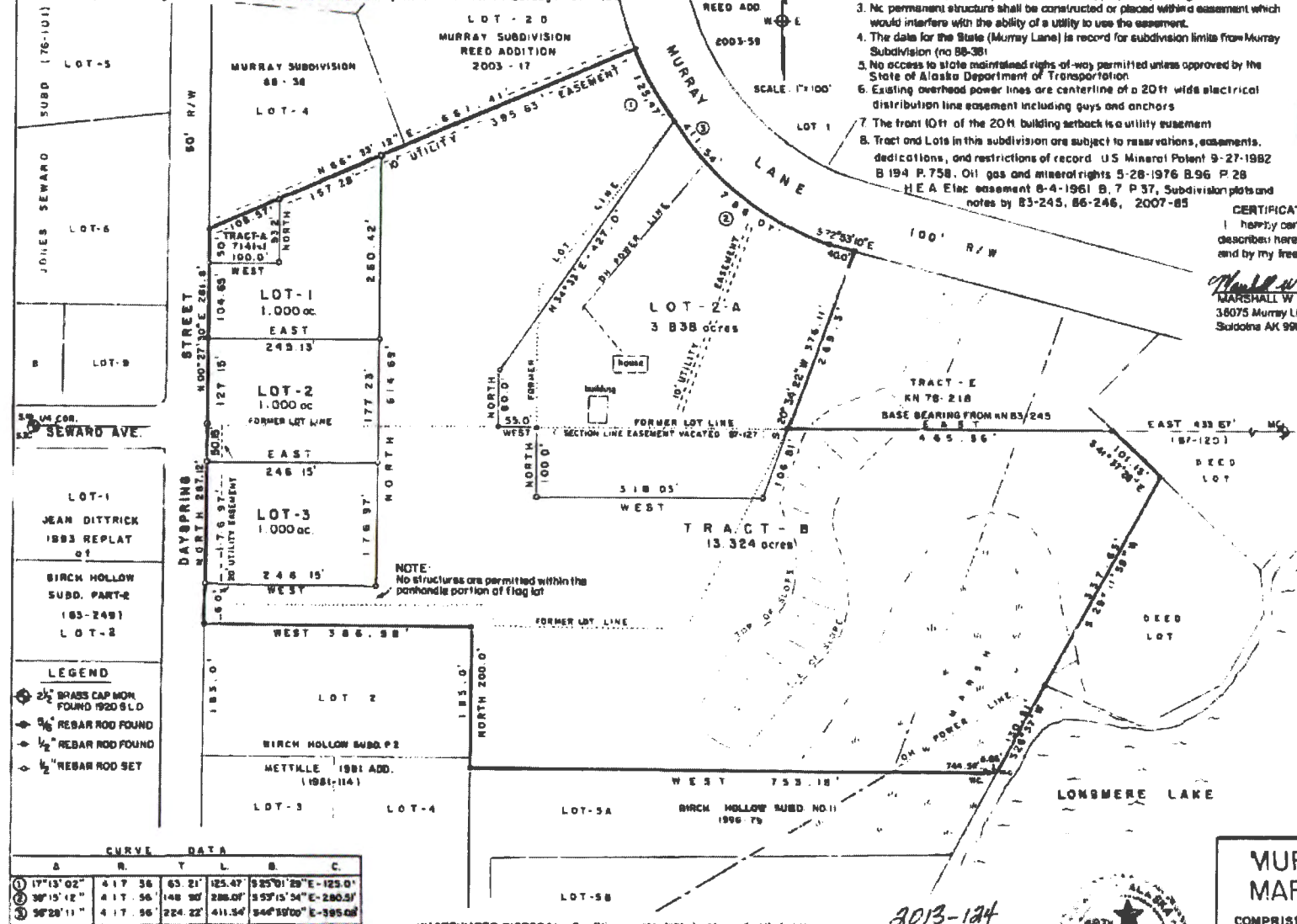
**END OF STAFF REPORT**





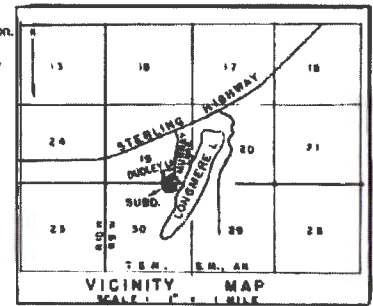
**WASTEWATER DISPOSAL FOR TRACT-A:** No wastewater will be generated or disposed of on Tract-A. Conditions might not be suitable for onsite wastewater treatment and disposal systems. Any onsite wastewater treatment and disposal system must meet the wastewater disposal requirements of KPB Chapter 20.14 and regulatory requirements of the Alaska Department of Environmental Conservation.

NOTE: Exceptions were granted to 20.20.030 and 20.20.190 by the Kenai Peninsula Borough Nov 14, 2014



#### NOTES:

1. Subdivision limits and ties to monuments are record data from Murray Subdivision (no. 88-38) measured and accepted as true data for this subdivision.
  2. A building setback of 20ft. is required from all street right-of-ways unless a lesser standard is approved by resolution of the appropriate planning commission.
  3. No permanent structure shall be constructed or placed within easement which would interfere with the ability of a utility to use the easement.
  4. The data for the State (Murray Lane) is record for subdivision limits from Murray Subdivision (no. 88-38).
  5. No access to state maintained rights-of-way permitted unless approved by the State of Alaska Department of Transportation.
  6. Existing overhead power lines are centerline of a 20 ft wide electrical distribution line easement including guys and anchors.
  7. The front 10 ft of the 20 ft building setback is a utility easement.
8. Tract and Lots in this subdivision are subject to reservations, easements, dedications, and restrictions of record: U.S. Mineral Patent 9-27-1982 B 194 P.758, Oil gas and mineral rights 5-28-1976 B.96 P.28 H.E.A. Elec. easement 8-4-1961 B.7 P.37, Subdivision plats and notes by 83-245, 86-246, 2007-85



#### CERTIFICATION OF OWNERSHIP AND DEDICATION

I hereby certify that I am the owner of the property shown and described herein, and that I hereby adopt this plan of subdivision and by my free consent grant all easements to the use shown.

*Marshall W. Martin*  
MARSHALL W. MARTIN  
38075 Murray LN  
Soldotna AK 99689

#### NOTARY'S ACKNOWLEDGEMENT

Subscribed and sworn before me this 30 day of December 2013 for Marshall W. Martin

Notary Public  
for Alaska  
*Paul B. Vellea*

My Commission  
Expires  
1-16-15

Official Seal  
STATE OF ALASKA  
MARIA E. SWERDLOFF  
NOTARY PUBLIC

#### PLAT APPROVAL

This subdivision plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of November 19, 2011 Kenai Peninsula Borough by Paul B. Vellea Authorized Official

CURVE DATA				
Δ	R	T	L	B. C.
① 17°13'02"	417.36	63.21	125.47	525°01'29"E-125.0'
② 30°15'12"	417.36	148.80	286.07	55°15'34"E-280.3'
③ 30°28'11"	417.36	224.22	411.54	54°33'00"E-395.08'

**WASTEWATER DISPOSAL FOR TRACT-B:** Tract-B is at least 200,000 square feet or nominal 5 acres in size and conditions may not be suitable for onsite wastewater treatment and disposal. Any wastewater treatment or disposal system must meet the regulatory requirements of the Alaska Department of Environmental Conservation

**WASTEWATER DISPOSAL:** Conditions, water table levels, and soil slopes for LOTS 1, 2, 2A, 3 in this subdivision have been found suitable for conventional onsite wastewater treatment and disposal systems serving single-family or duplex residences and meeting the regulatory requirements of the Kenai Peninsula Borough. Any other type of onsite wastewater treatment and disposal system must be designed by a professional engineer, registered to practice in Alaska, and the design must be approved by the Alaska Department of Environmental Conservation

*CE13353*  
(Signature of Engineer)

License no.

23 Dec 2013  
Date

2013-124  
Plat #  
Kenai  
12-30-13  
Time 3:53 p.m.



October 30, 2013  
Terry T. Eastham  
No. 157829

K.P.B. FILE NO 2011-168

## MURRAY SUBDIVISION MARTIN ADDITION NO.3

COMPRISED OF 20.346 acres LOT-1 (4.95 ac) LOT-2 (3.00 ac) MURRAY SUBDIVISION MARTIN ADDITION NO.2 (2007-85) TRACT-B (1.473 ac) BIRCH HOLLOW SUBD. NO. 3 (83-245) LOT-1-A (1.782 ac) BIRCH HOLLOW SUBD. P. 2 (87-120) IN THE N 1/2 NE 1/4 SECTION 30, and the SE 1/4 SECTION 19 T5N, R9N, S5M, Kenai Recording District

KENAI PENINSULA BOROUGH, ALASKA

OWNERS: MARSHALL W. MARTIN

BOX 49 R12 SOLOCTHA, AK 99689

SURVEYOR: TERRY T. EASTHAM NO. 157829, 33886 COMMUNITY COLLEGE DR. SOLDOTNA, AK 99689  
SCALE: 1"=100' DATE: AUGUST 2011

Kenai 2013-124



## **KENAI PENINSULA BOROUGH**

144 North Binkley Street • Soldotna, Alaska 99669-7520

Toll-free within the Borough: 1-800-478-4441

PHONE: (907) 262-4441 • FAX: (907) 262-1892

www.borough.kenai.ak.us

**MIKE NAVARRE**  
**BOROUGH MAYOR**

### **CERTIFICATE OF TAX DEPARTMENT**

I, Rhonda K. Krohn, Property Tax and Collections Supervisor for the Kenai Peninsula Borough, do hereby certify that, as of the date of this certificate, all real property taxes levied by the Kenai Peninsula Borough have been paid for the area(s) described as:

Subdivision: MURRAY SUBDIVISION MARTIN ADDITION NUMBER THREE

Parcel # 06372023

T 5N R 9W SEC 30 Seward Meridian KN 0830245 BIRCH HOLLOW SUB NO 3 TRACT B-1

Parcel # 06372032

T 5N R 9W SEC 30 Seward Meridian KN 0870128 BIRCH HOLLOW SUB PART 2 1987  
SUPPLEMENTAL TO PLAT KN860246 LOT 1-A-1

Parcel # 06346020

T 5N R 9W SEC 19 Seward Meridian KN 2007085 MURRAY SUB MARTIN ADDN NO 2 LOT  
1

Parcel # 06346021

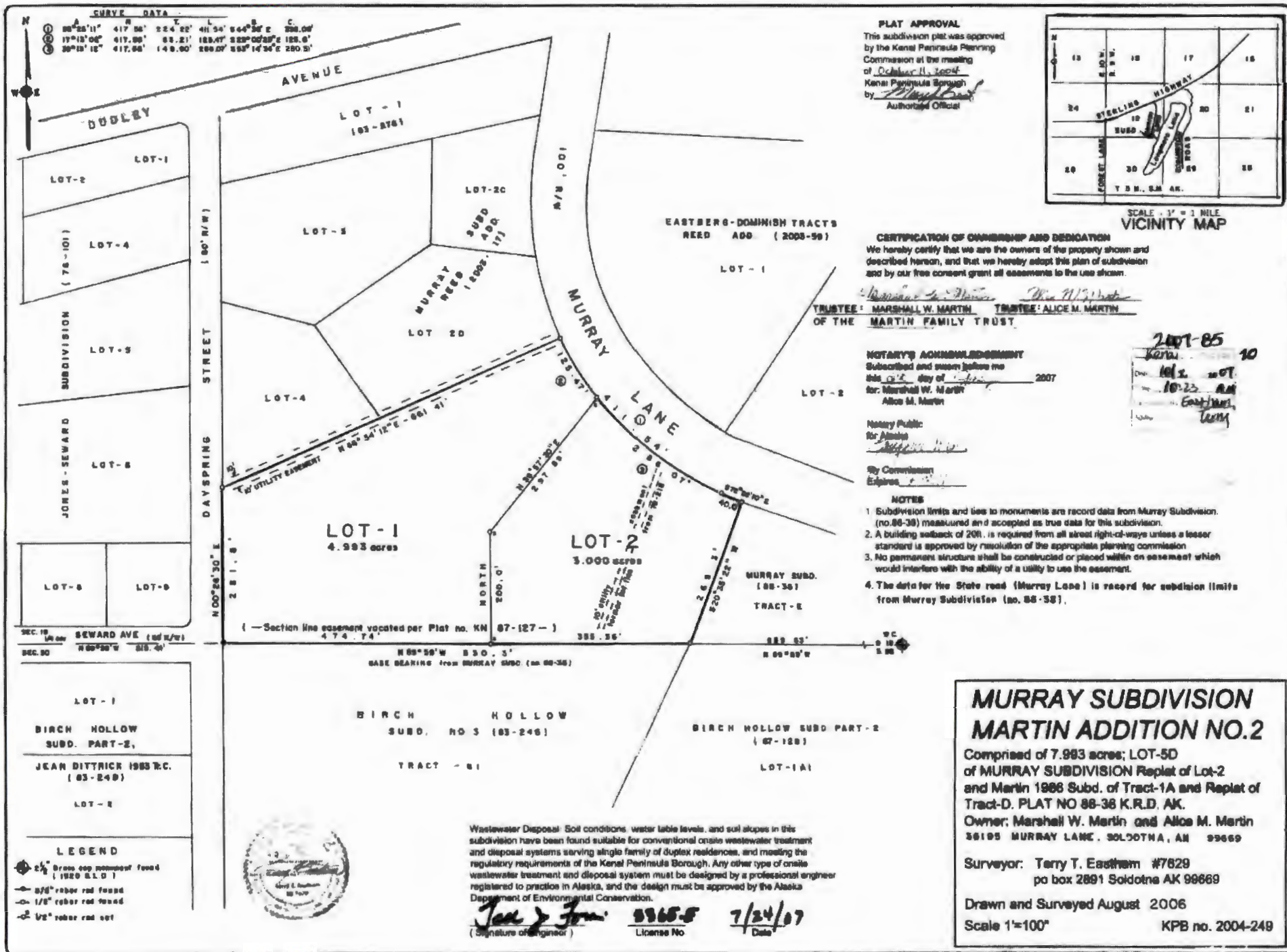
T 5N R 9W SEC 19 Seward Meridian KN 2007085 MURRAY SUB MARTIN ADDN NO 2 LOT  
2

The following assessments (except assessments for the cities of Homer, Kenai, Seward, Seldovia, and Soldotna) levied against this property are outstanding:  
NONE.

Witness my hand and seal this 13th day of December, 2013.

Rhonda K. Krohn  
Property Tax and Collections Supervisor







# LAT APPROVAL

his plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of Dec. 1, 1986

ENAI PENINSULA BOROUGH

*Richard B. Tangle*  
AUTHORIZED OFFICIAL

## NOTE

Building set back of 20' from all R.O.W.s is required unless a lesser standard is approved by a resolution of the appropriate planning commission. Front 10' of building setback is also a utility easement and also the minimum setback within 50' side of lines for guy wires.

lots on these lots may or may not be suitable for conventional on site waste disposal systems. No person may construct, install, maintain or operate a pressurized water system or water waste disposal system, unless approval of the ALASKA DEPT. OF ENVIRONMENTAL CONSERVATION is obtained.

No structures permitted within portable portion of lot 1-A-1.

## OWNER'S CERTIFICATE

We hereby certify that we are the owners of the property shown and described herein, and that we hereby adopt this plan of subdivision and grant all easements to as shown

FOR APOSTOLIC ASSEMBLY  
OF JESUS CHRIST  
(LOT 1-A, KRD 83-245)

*Charles W. Mettill*  
CHARLES W. METTILLE  
*Diana Mettill*  
DIANA METTILLE  
MARSHALL W. MARTIN  
ALICE M. MARTIN

## NOTARY'S ACKNOWLEDGEMENT

Subscribed and sworn to before me this day of 1986

NOTARY PUBLIC FOR ALASKA for C.W. and D. Mettill, and M.W. and A.M. Martin

My commission expires

## LEGEND

- 1920 G.L.O. brass cap man
- 1/2" rebar found
- 1/2" x 2' rebar set

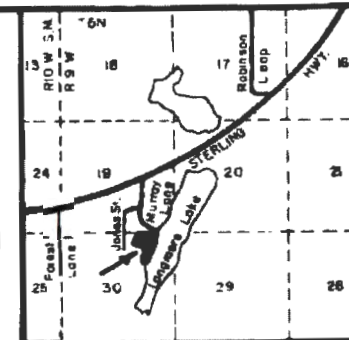
# BIRCH HOLLOW SUBD. PART 2 1986 REPLAT OF TRACT A-2, AND LOT 1-A - KRD 83-245

LOCATED IN NE 1/4, SEC. 30, T.5N., R.9W., S.M.,  
KENAI RECORDING DISTRICT, ALASKA.

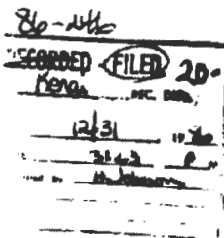
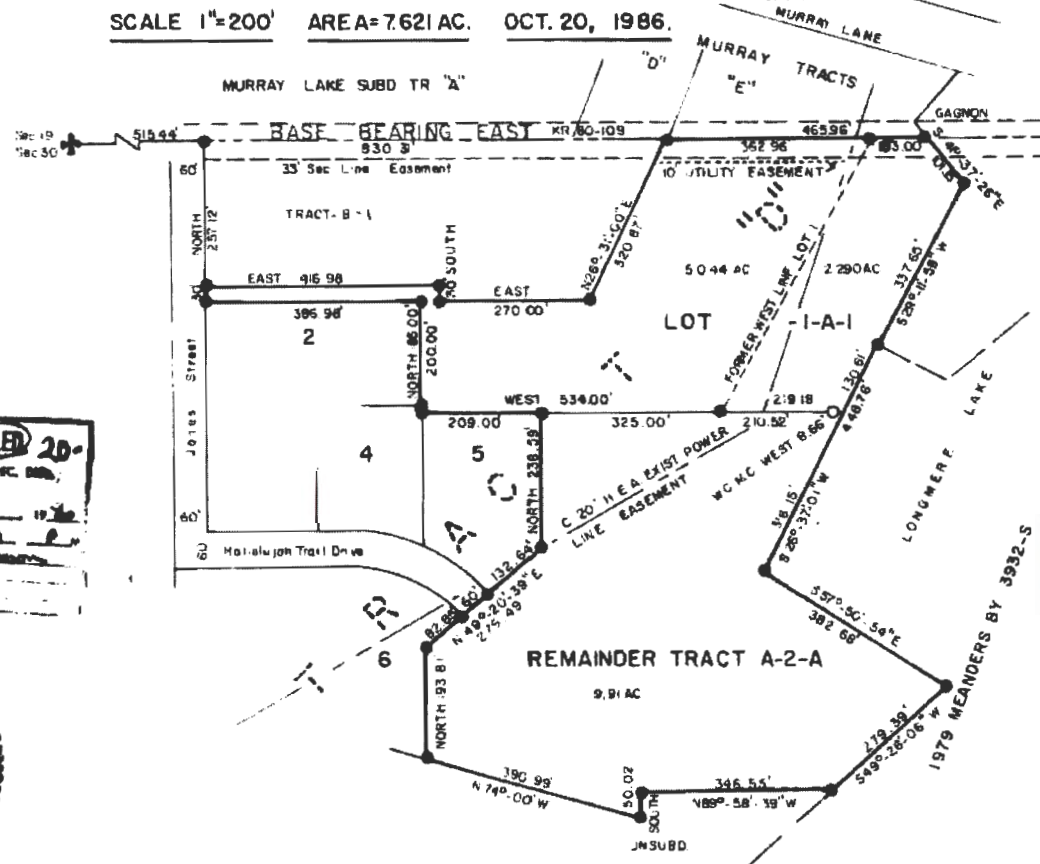
BY MARSHALL AND ALICE MARTIN

BOX 49 RT.2 SOLDOTNA, ALASKA, 99669

SCALE 1"=200' AREA=7.621 AC. OCT. 20, 1986.



VICINITY MAP




Box 27 Clon Guch, AK 99568

Kenai Peninsula Borough  
Office of the Borough Mayor

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**MEMORANDUM**

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

**THRU:** Charlie Pierce, Kenai Peninsula Borough Mayor 

**DATE:** January 4, 2022

**RE:** North Road Extension Advisory Task Force Applications

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Pursuant to Resolution 2021-077, the advisory task force shall consist of seven (7) members that are appointed by the Mayor and confirmed by the Assembly. I hereby submit my recommendations for confirmation by the Assembly, of the following appointments to the North Road Extension Advisory Task Force:

<u>Applicant</u>	<u>Residence Address</u>
Katelyn Sarvela	Lot 176 Kenai Spur Highway, Nikiski
Jason Ross	47520 Sunflower Street, Kenai
Timothy O'Brien	49181 Freda Drive, Kenai

Attachments: Applications for Appointment

Kenai Peninsula Borough  
Office of the Borough Clerk

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**MEMORANDUM**

**TO:** Charlie Pierce, Borough Mayor  
**THRU:** Johni Blankenship, Borough Clerk (JB)  
**FROM:** Michele Turner, Deputy Borough Clerk (MT)  
**DATE:** December 20, 2021  
**RE:** North Road Extension Advisory Task Force Applications

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Pursuant to Resolution 2021-077, the advisory task force shall consist of seven (7) members that are appointed by the Mayor and confirmed by the Assembly. Three appointees were confirmed by the Assembly at their December 7, 2021 meeting, which left four vacant seats.

The application period for the advisory task force closed on November 26, 2021 and has remained opened until filled. Three additional applications were received and are attached herewith for your review and consideration.

<u>Applicant</u>	<u>Residence Address</u>
Katelyn Sarvela	Lot 176 Kenai Spur Highway, Nikiski
Jason Ross	47520 Sunflower Street, Kenai
Timothy O'Brien	49181 Freda Drive, Kenai

cc: Roads Department

**Turner, Michele**

---

**From:** Kenai Peninsula Borough <webmaster@kpb.us>  
**Sent:** Monday, December 6, 2021 9:03 AM  
**To:** Turner, Michele; Blankenship, Johni  
**Cc:** Uhlin, Dil; Agosti, Elaine  
**Subject:** North Road Extension Advisory Task Force Application Submitted

## Kenai Peninsula Borough

### North Road Extension Advisory Task Force Application

<b>Name</b> Katelyn Sarvela	<b>Task Force Choice</b> Seat A (Term Expires October 12, 2022)
<b>Email Address</b> Katiesarvela@gmail.com	<b>Phone</b> 9073061869
<b>Residence Address</b> Lot 176 Kenai Spur Hwy Nikiski, Alaska 99635	<b>Mailing Address</b> P.O. Box 7572 Nikiski, Alaska 99635
<b>Comments</b> I am a full time resident of the Moose Point subdivision.	



## Turner, Michele

---

**From:** Kenai Peninsula Borough <webmaster@kpb.us>  
**Sent:** Monday, December 13, 2021 5:15 PM  
**To:** Turner, Michele; Blankenship, Johni  
**Cc:** Uhlin, Dil; Agosti, Elaine  
**Subject:** North Road Extension Advisory Task Force Application Submitted

# Kenai Peninsula Borough

## North Road Extension Advisory Task Force Application

<b>Name</b> Jason Ross	<b>Task Force Choice</b> Seat D (Term Expires October 12, 2022)
<b>Email Address</b> supertrucker2b4u@yahoo.com	<b>Phone</b> 9073945807
<b>Residence Address</b> 47520 Sunflower st Kenai, Alaska 99611	<b>Mailing Address</b> ,
<b>Comments</b> currently the president of the Nikiski Community Council for the last 3 years. I have been on the borough aking advisory board. I have been a Nikiski resident since 1982, and have been recreating, hunting, fishing camping in Graycliff and Moose Point since 1983 starting at 10 years old. I have been a property owner in Graycliff since 2003. I know many of the people who live out there and many of the landowners. I have helped build several cabins out there and spend alot of time out there. Please consider me for a seat on the board	

**Turner, Michele**

---

**From:** Kenai Peninsula Borough <webmaster@kpb.us>  
**Sent:** Saturday, December 18, 2021 10:27 AM  
**To:** Turner, Michele; Blankenship, Johni  
**Cc:** Uhlin, Dil; Agosti, Elaine  
**Subject:** North Road Extension Advisory Task Force Application Submitted

## Kenai Peninsula Borough

### North Road Extension Advisory Task Force Application


<b>Name</b> Timothy O'Brien	<b>Task Force Choice</b> Seat D (Term Expires October 12, 2022)
<b>Email Address</b> robertaobrien53@yahoo.com	<b>Phone</b> 9077768788
<b>Residence Address</b> 49181 Freda Dr Kenai, AK 99611	<b>Mailing Address</b> ,
<b>Comments</b> I don't use internet so to contact me use my land phone number or regular mail. I changed my mind and want to be on this task force.	

Kenai Peninsula Borough  
Office of the Borough Mayor

---

**MEMORANDUM**

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

**THRU:** Charlie Pierce, Kenai Peninsula Borough Mayor 

**DATE:** January 4, 2022

**RE:** Appointment to the South Kenai Peninsula Hospital Service Area Board

---

I hereby submit my recommendation for confirmation by the Assembly, of the following appointment to the South Kenai Peninsula Hospital Service Area Board, Seat F. The applicant is verified as a registered voter, and resides within the Service Area to be represented. Application is attached for your review:

KPB16.24.070      South Kenai Peninsula Hospital Service Area Board

Timothy J. Whip

Seat F

Expires 10/2023

Attachments: Clerks Verification & Applications for Appointment

Kenai Peninsula Borough  
Office of the Borough Clerk

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**MEMORANDUM**

**TO:** Charlie Pierce, Borough Mayor  
**THRU:** Johni Blankenship, Borough Clerk (JB)  
**FROM:** Michele Turner, Deputy Borough Clerk (M.T.)  
**DATE:** December 21, 2021, 2021  
**RE:** Service Area Board Application for Appointment

---

A notice of vacancy for the South Kenai Peninsula Hospital Service Area Board, Seat F was advertised on the borough's website. The application period closed on December 10, 2021.

In accordance with KPB 16.24.050, the applicant listed below has been verified as a qualified voter of the borough and resident of the service area. The application is submitted herewith for your consideration.

**South Kenai Peninsula Hospital Service Area – Seat F**

Timothy J. Whip



# Kenai Peninsula Borough

## Office of the Borough Clerk

Service Area Board Application Submitted 2021-12-05 15:18:28

Service Area: South Kenai Peninsula Hospital Service Area – Seat F (Term Expires 10/2023)

<b>Applicant Name</b> Timothy J. Whip	<b>Daytime Phone</b> 907.299.2539
<b>Email</b> tim_whip@yahoo.com	<b>Date of Birth</b> [REDACTED]
<b>Physical Residence Address</b> 57639 Kokomo Rd Homer, AK 99603	<b>Mailing Address</b> , 99603
<b>SS #</b>	<b>Voter #</b>
<b>I have been a Resident of the Kenai Peninsula Borough for:</b> 29 years, 6 months	<b>I have been a Resident of the selected Service Area for:</b> 29 years, 6 months
<b>What knowledge, experience, or expertise will you bring to this board?</b> As a retired administrator for KPBSD I've had extensive experience working with school district budgets, community relations and capital projects. I believe that SPH is a vital component to a healthy community and I will work to keep it functioning effectively.	

Kenai Peninsula Borough  
Office of the Borough Mayor

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**MAYOR'S REPORT TO THE ASSEMBLY**

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

**FROM:** Charlie Pierce, Kenai Peninsula Borough Mayor

**DATE:** January 4, 2022



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Assembly Request / Response

None

Agreements and Contracts

- a. Sole Source Waiver – Analytix Technologies, LLC.
- b. Authorization to Award a Contract for RFP22-011 Central Peninsula Landfill Leachate Infrastructure Improvement Design to Geosyntec Consultants, Anchorage, AK.
- c. Authorization to Award a Contract for ITB22-023 Central Peninsula Landfill Brush Burning 2021 to Andrews and Sons LLC., Seward AK.
- d. Authorization to Award a Contract for RFP22-009 Kachemak Selo School Schematic Design to Architects Alaska Inc., Anchorage, AK.
- e. Authorization to Award a Contract for RFP22-012 Custody & Safekeeping of Marketable Debt Securities to Wells Fargo Institutional Retirement and Trust, Anchorage, AK.
- f. Sole Source Waiver – Wolverine Supply, Inc., Nanwalek Sewer Line Repairs

Other

- Investment Report Quarter Ended 09/30/21
- Revenue-Expenditure Report – November 2021
- Budget Revisions – November 2021

# Kenai Peninsula Borough

## Solid Waste Department

### MEMORANDUM

**TO:** Charlie Pierce, Borough Mayor

**THRU:** John Hedges, Purchasing & Contracting Director *JH*

**THRU:** Dil Uhlin, Acting SWD Director *DU*

**FROM:** Brian Smith, CPL Manager *BS*

**DATE:** December 7, 2021

**RE:** AnalyTix Technologies, LLC Sole Source Waiver

The Kenai Peninsula Borough Solid Waste Department would like to obtain a sole source to purchase antiscalent / antifoam process chemicals from AnalyTix Technologies, LLC. We request this sole source based on chemical compatibility with our existing leachate and our chemical delivery system. We cannot mix nor switch chemicals during the leachate evaporation process without significantly impacting the evaporator system performance.

The purchase is time sensitive because this piece of equipment is vital for everyday landfill functions and our supply of product is low.

We request approval for this purchase. Funding for this project is in account number 290.32122.42210 in the amount of \$15,800.00.

APPROVED: Charlie Pierce DATE: 12/8/2021  
Charlie Pierce, Mayor

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No:	<u>290.32122.00000.42210</u>
Amount:	<u>\$15,800.00</u>
By: <i>CS</i> <i>BH</i>	Date: <u>12/7/2021</u>
NOTES:	NA

# Kenai Peninsula Borough

## Purchasing and Contracting Department

### MEMORANDUM

**TO:** Charlie Pierce, Mayor

**THRU:** John Hedges, Purchasing & Contracting Director *JH*

**FROM:** Lee Frey, Project Manager *LF*

**DATE:** December 8, 2021

**RE:** Authorization to Award a Contract for RFP22-011 Central Peninsula Landfill Leachate Infrastructure Improvement Design

The Purchasing and Contracting Office formally solicited and received proposals for RFP22-011 Central Peninsula Landfill Infrastructure Improvement Design. Proposal packets were released and the Request for Proposal was advertised in the Peninsula Clarion on October 19, 2021 and the Anchorage Daily News on October 18, 2021.

The project consists of designing various infrastructure improvements to the Central Peninsula Landfill Leachate system including a new above ground storage tank, new leachate pond and improvements to piping and SCADA.

On the due date of November 16, 2021 two (2) proposals were received and ranked by a review committee as follows:

<u>FIRM</u>	<u>LOCATION</u>	<u>TOTAL SCORE</u>
Geosyntec Consultants	Anchorage, Alaska	329
Tetra Tech	Anchorage, Alaska	293

The highest ranking proposal, which includes a cost factor, was submitted by Geosyntec Consultants with a lump sum cost proposal of \$333,900.00. The proposal review committee recommends award of a contract to Geosyntec Consultants. Your approval for this award is hereby requested.

Funding for this project is in account number 411.32122.SLF02.43011

Charlie Pierce  
Charlie Pierce, Mayor

12/8/2021

Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	411.32122.SLF02.43011
Amount	\$333,900.00
By: <i>CJF BH</i>	Date: 12/8/2021

NA



# Kenai Peninsula Borough

## Solid Waste Department

### MEMORANDUM

**TO:** Charlie Pierce, Mayor

**THRU:** John Hedges, Purchasing & Contracting Director *JH*

**FROM:** Dil Uhlin, Acting Solid Waste Director *DU*

**DATE:** December 8, 2021

**RE:** Authorization to Award a Contract for ITB22-023 Central Peninsula Landfill Brush Burning 2021

The Purchasing and Contracting Office formally solicited and received bids for the ITB22-023 Central Peninsula Landfill Brush Burning 2021. Bid packets were released on November 9, 2021, and the Invitation to Bid was advertised in the Peninsula Clarion on November 9, 2021.

The project consists of open burning of approximately 3,700 tons of slash and land clearing debris located at the Central Peninsula Landfill. Burning is expected to take place 24 hours per day, 7 days per week until all is burned and pile(s) is/are extinguished.

On the due date of December 1, 2021, nine (9) bids were received and reviewed to ensure that all the specifications and delivery schedules were met. The low bid of \$47,545 was submitted by Andrews and Sons LLC, Seward, Alaska.

Your approval for this bid award is hereby requested. Funding for this project is in account number 290.32122.00000.43011


Charlie Pierce  
Charlie Pierce, Mayor

12/8/2021  
Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No. <u>290321.22.00000.43011</u>	
Amount <u>\$47,545</u>	
By: <u>CJ BH</u>	Date: <u>12/8/2021</u>
NOTES: NA	

**KENAI PENINSULA BOROUGH  
PURCHASING & CONTRACTING****BID TAB FOR: ITB22-023 CPL BRUSH BURNING 2021**

CONTRACTOR	LOCATION	BASE BID
Andrews & Sons, LLC	Seward, Alaska	\$47,545.00
Alaska Remote Builders	Soldotna, Alaska	\$62,900.00
Foster Construction, LLC	Soldotna, Alaska	\$65,860.00
Rock Bottom Enterprises, LLC	Kenai, Alaska	\$67,673.00
D & L Construction Co., Inc.	Cooper Landing, Alaska	\$73,963.00
Miller Unlimited, LLC	Soldotna, Alaska	\$84,101.00
Evergreen Alaska, Inc	Kasilof, Alaska	\$88,800.00
Arrow Operations, LLC	Kasilof, Alaska	\$91,069.20
Great Northern Construction & Management	Soldotna, Alaska	\$176,560.00

DUE DATE: December 1, 2021KPB OFFICIAL:  
John Hedges, Purchasing & Contracting Director

# Kenai Peninsula Borough

## Purchasing and Contracting Department

### MEMORANDUM

**TO:** Charlie Pierce, Mayor

**THRU:** John Hedges, Purchasing & Contracting Director *JH*

**FROM:** Lee Frey, Project Manager *LF*

**DATE:** December 10, 2021

**RE:** Authorization to Award a Contract for RFP22-009 Kachemak Selo School Schematic Design

The Purchasing and Contracting Office formally solicited and received proposals for RFP22-009 Kachemak Selo School Schematic Design. Proposal packets were released and the Request for Proposal was advertised in the Peninsula Clarion, Anchorage Daily News and Homer News on September 23, 2021.

The project consists of providing professional architectural and engineering services to complete 35% schematic design for a new school facility in Kachemak Selo. Project includes development of cost estimates and energy consumption reports.

On the due date of October 26, 2021 seven (7) proposals were received and ranked by a review committee as follows:

<u>FIRM</u>	<u>LOCATION</u>	<u>TOTAL SCORE</u>
Architects Alaska, Inc.	Anchorage, Alaska	341
Wolf Architecture, Inc.	Palmer, Alaska	320
ECI/Hyer, Inc. dba ECI	Anchorage, Alaska	275
Nvision Architecture, Inc.	Anchorage, Alaska	288
MCG Explore Design	Anchorage, Alaska	280
Bettiworth North Architects and Planners, Inc.	Fairbanks, Alaska	280
LCG Lantech, Inc.	Anchorage, Alaska	249

The highest ranking proposal, which includes a cost factor, was submitted by Architects Alaska, Inc. At this time, the contract will be for programming and value engineering services only for a total of \$99,438, with the intent of completing schematic design services after project milestones are achieved. The proposal review committee recommends award of a contract to Architects Alaska, Inc. Your approval for this award is hereby requested.

Funding for this project is in account number 400.78050.13DSG.49311.

*Charlie Pierce*

Charlie Pierce, Mayor

12/13/2021

Date

BUDGET REVISION HAS BEEN  
SUBMITTED. 12/10/21 pdh

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	<u>400.78050.13DSG.49311</u>
Amount	<u>\$99,438.00</u>
By: <i>CJ BH</i>	Date: <u>12/10/2021</u>

# Kenai Peninsula Borough

## Purchasing & Contracting

### MEMORANDUM

**TO:** Charlie Pierce, Mayor

**THRU:** John D. Hedges, Purchasing & Contracting Director *JH*

**FROM:** Brandi Harbaugh, Finance Director *BH*

**DATE:** December 13, 2021

**RE:** Authorization to Award a Contract for RFP22-012 Custody & Safekeeping of Marketable Debt Securities

On October 26, 2021, the Kenai Peninsula Borough Finance Department formally solicited proposals for RFP22-012 Custody & Safekeeping of Marketable Debt Securities. The request for proposals was advertised in the Peninsula Clarion and the Anchorage Daily News on October 26, 2021.

The project consists of providing custodial services including, but not limited to, securities safekeeping, settlement, delivery, securities valuation and other services in connection with the Borough's marketable debt securities.

On the due date of December 2 2021, one (1) proposal from Wells Fargo Institutional Retirement and Trust was received and reviewed by the Finance Department.

The proposal, which includes a cost factor, was submitted by Wells Fargo Institutional Retirement and Trust with a lump sum cost proposal of \$8,500.00. The Finance Department recommends award of a contract to Wells Fargo Institutional Retirement and Trust, Anchorage, Alaska. Your approval for this award is hereby requested.

Funding of this contract will be charged to account number 100.00000.00000.37350.

Charlie Pierce  
Charlie Pierce, Mayor

12/14/2021

Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	100.00000.00000.37350
Amount	\$8,500.00
By: <i>CJ</i>	Date: 12/13/2021


NA




# Kenai Peninsula Borough Maintenance

## MEMORANDUM

**TO:** Charlie Pierce, Mayor

**THRU:** John Hedges, Purchasing & Contracting Director 

**FROM:** Tom Nelson, Maintenance Director 

**DATE:** December 16, 2021

**RE:** Wolverine Supply, Inc. Nanwalek Sewer Line Repairs

Under Section 5.28.280a of the Borough code, it is requested that Wolverine Supply, Inc. be authorized as the sole provider for excavation and repair of the Nanwalek School sewer line for a not to exceed amount of \$40,000.

The Nanwalek sewer line has stopped flowing, and repeated efforts by Maintenance Department to clear the line have failed. Wolverine Supply, Inc. is already on site and under contract for other tasks, and are the only contractor with personnel and equipment already across the bay. Weather conditions have prevented other contractors from mobilizing. As the only immediately available crew with equipment, Maintenance requested they start excavation and repairs on an emergency basis.

Your approval of this request will allow the expedient repair of the Nanwalek School sewer line and returning the school to operation.

This office is available for any questions regarding this request.

Approved: Charlie Pierce Date: 12/17/2021  
Charlie Pierce, Mayor

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No. 241.41010.00000.43780	
Amount \$40,000	
By: <u>CS BH</u>	Date: <u>12/16/2021</u>

Budget Revision Submitted 121621 pdh

# Kenai Peninsula Borough

## Finance Department

### MEMORANDUM

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

**THRU:** Charlie Pierce, Borough Mayor *ch*  
Brandi Harbaugh, Finance Director *BH*

**FROM:** Chad Friedersdorff, Financial Planning Manager *CF*

**DATE:** January 4, 2022

**RE:** Investment Report quarter ended 09/30/21

Attached is the Quarterly Investment Report of the Kenai Peninsula Borough for the quarter ending September 30, 2021.

Portfolio Statistics	Quarter Ended 6/30/2021	Quarter Ended 9/30/2021
Average Daily Balance	\$249,823,083	\$255,070,698
Earned Interest Yield	0.774%	0.674%
Duration in Years	1.99	1.94
Book Value	\$249,132,285	\$277,478,349
Market Value	\$249,627,515	\$277,365,922
Percent % of Market Value	99.80%	100.04%

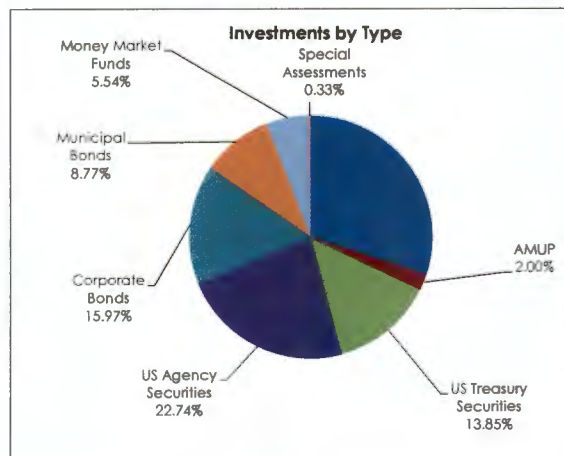
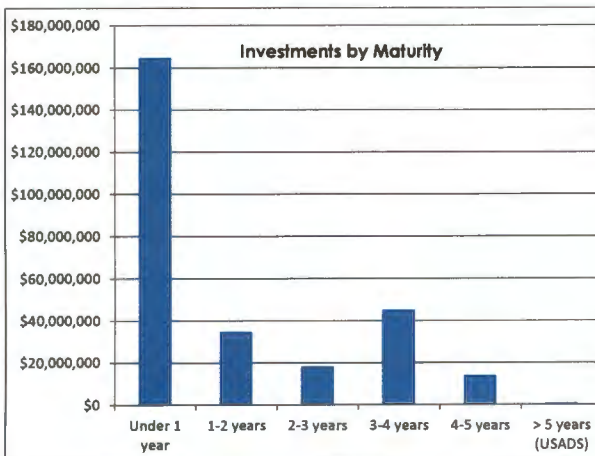
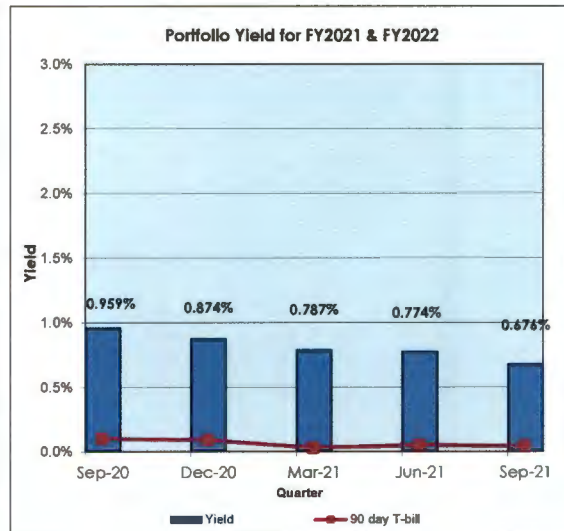
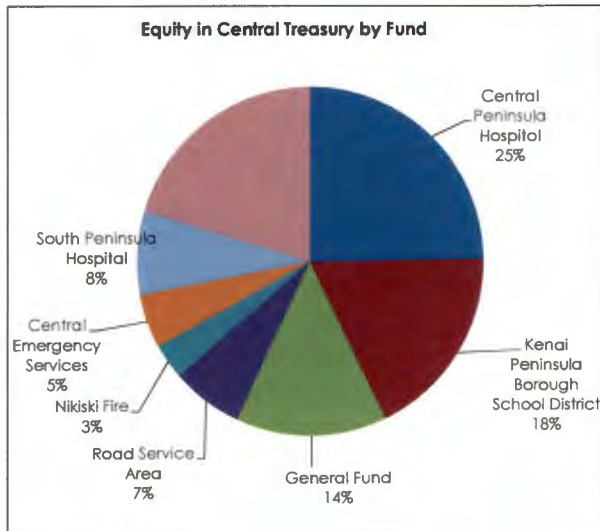
Investment Description	Yield quarter ending 6/30/2021	Yield quarter ending 9/30/2021	Market Value quarter ending 9/30/2021
Cash and Cash Equivalents	0.15%	0.15%	\$83,437,650
AMLIP	0.01%	0.01%	5,550,900
U.S. Treasury Securities	0.44%	0.42%	38,241,639
US Agencies	1.28%	1.36%	63,039,785
Corporate Bonds	1.47%	1.17%	44,342,953
Municipal Bonds	1.51%	1.40%	26,463,182
Money Market Mutual Funds	0.01%	0.01%	15,372,926
Special Assessments	5.47%	5.46%	916,887
<b>Total</b>			<b>\$277,365,922</b>

Major Categories:	Percentage of Portfolio	Book Value quarter ending 9/30/2021
Bond related funds	4.37%	\$12,146,156
CARES Advance funding	0.15%	435,815
Hospital plant/equipment replacement funds (PERF)-unobligated	22.48%	62,373,078
School District	18.11%	50,263,144
Capital Project fund restrictions	17.61%	48,852,589
Special Revenue funds restrictions	20.98%	58,206,400
Internal Service/Agency fund restrictions	5.54%	15,359,104
General Fund	10.76%	29,842,063
<b>Total</b>	<b>100.00%</b>	<b>\$277,478,349</b>

# INVESTMENT PORTFOLIO September 30, 2021

	Par Value	Purchase Price	Fair Value 09/30/2021
<b>Investments by Borough Finance Director</b>			
CORPORATE	13,745,000.00	14,039,119.00	13,926,135.94
COMMERCIAL PAPER	0.00	0.00	0.00
MUNICIPAL	2,000,000.00	2,000,000.00	2,000,080.00
AGENCY	18,500,000.00	18,879,231.78	18,657,990.00
US TREASURY	23,500,000.00	23,834,387.22	23,593,625.00
<b>Total Investment by Borough Finance Director:</b>	<b>57,745,000.00</b>	<b>58,752,738.00</b>	<b>58,177,830.94</b>
<b>Investment with External manager:</b>			
CORPORATE	29,562,000.00	30,276,452.91	30,416,816.99
MUNICIPAL	23,785,000.00	24,369,488.50	24,463,101.65
AGENCY	44,061,411.32	44,213,987.09	44,381,794.48
US TREASURY	14,600,000.00	14,587,318.45	14,648,014.00
<b>Total Security Investment with External manager:</b>	<b>112,008,411.32</b>	<b>113,447,246.95</b>	<b>113,909,727.12</b>
<b>TOTAL SECURITY INVESTMENTS</b>	<b>169,753,411.32</b>	<b>172,199,984.95</b>	<b>172,087,558.06</b>
CASH & CASH EQUIVALENTS	104,361,477.01	104,361,477.01	104,361,477.01
SPECIAL ASSESSMENTS	916,887.42	916,887.42	916,887.42
<b>TOTAL PORTFOLIO</b>	<b>275,031,775.75</b>	<b>277,478,349.38</b>	<b>277,365,922.49</b>

Security Portfolio - Purchase Price	\$ 172,199,984.95
Security Portfolio - Fair Value 09/30/21	172,087,558.06
<b>Fair Value Adjustment -09/30/21</b>	<b>(112,426.89)</b>
Fair Value Adjustment - 6/30/21	495,230.15
Change in Fair Value FY2022	\$ (607,657.04)





# KENAI PENINSULA BOROUGH - LAND TRUST INVESTMENT FUND

Account Statement - Period Ending July 31, 2021



ALASKA PERMANENT  
CAPITAL MANAGEMENT  
Registered Investment Adviser

## ACCOUNT ACTIVITY

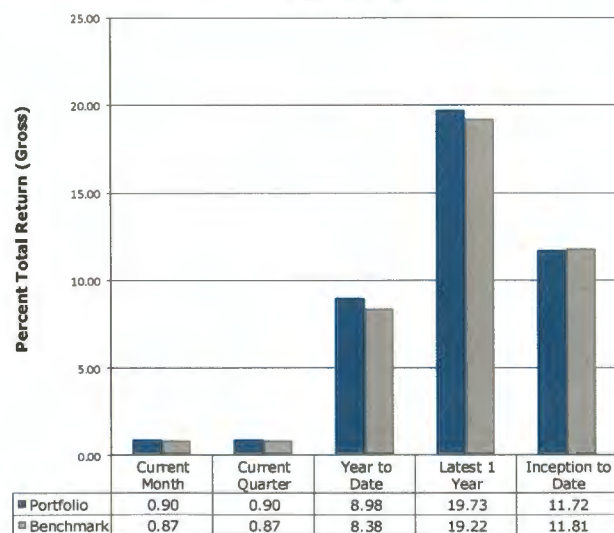
Portfolio Value on 06-30-21 7,794,134

Contributions	0
Withdrawals	-974
Change in Market Value	60,546
Interest	4
Dividends	9,863

Portfolio Value on 07-31-21 7,863,571

## INVESTMENT PERFORMANCE

Current Account Benchmark:  
Equity Blend



Performance is Annualized for Periods Greater than One Year

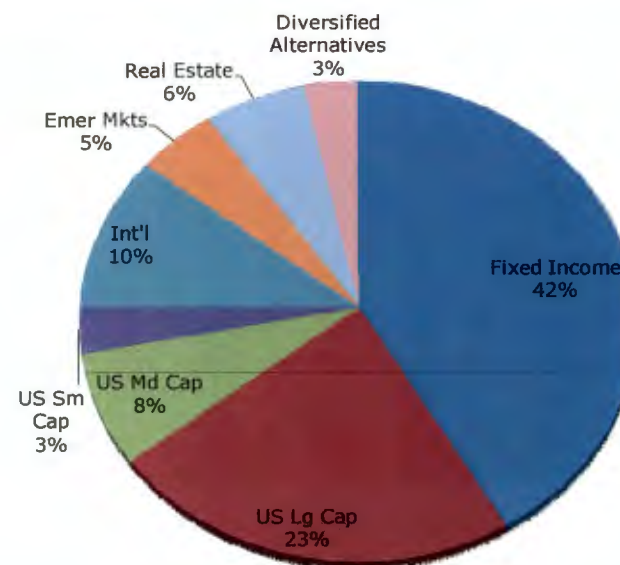
## MANAGEMENT TEAM

Client Relationship Manager: Blake Phillips, CFA®  
Blake@apcm.net

Your Portfolio Manager: Brandy Niclai, CFA®

Contact Phone Number: 907/272-7575

## PORTFOLIO COMPOSITION





# KENAI PENINSULA BOROUGH - LAND TRUST INVESTMENT FUND

Account Statement - Period Ending August 31, 2021



ALASKA PERMANENT  
CAPITAL MANAGEMENT  
Registered Investment Adviser

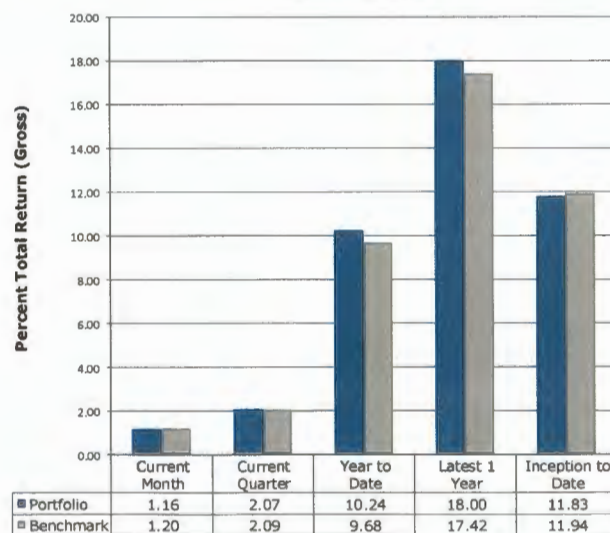
## ACCOUNT ACTIVITY

Portfolio Value on 07-31-21	7,863,571
Contributions	0
Withdrawals	-983
Change in Market Value	88,069
Interest	4
Dividends	2,921

Portfolio Value on 08-31-21 7,953,582

## INVESTMENT PERFORMANCE

Current Account Benchmark:  
Equity Blend



Performance is Annualized for Periods Greater than One Year

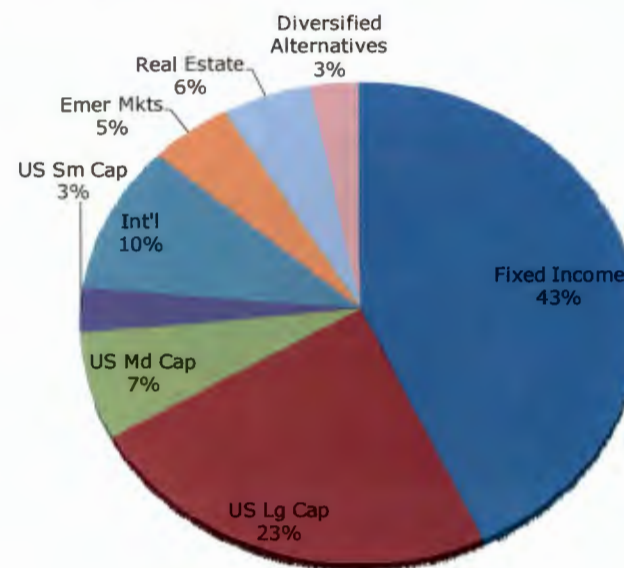
## MANAGEMENT TEAM

Client Relationship Manager: Blake Phillips, CFA®  
Blake@apcm.net

Your Portfolio Manager: Brandy Niclai, CFA®

Contact Phone Number: 907/272-7575

## PORTFOLIO COMPOSITION



# KENAI PENINSULA BOROUGH - LAND TRUST INVESTMENT FUND

Account Statement - Period Ending September 30, 2021



ALASKA PERMANENT  
CAPITAL MANAGEMENT  
Registered Investment Adviser

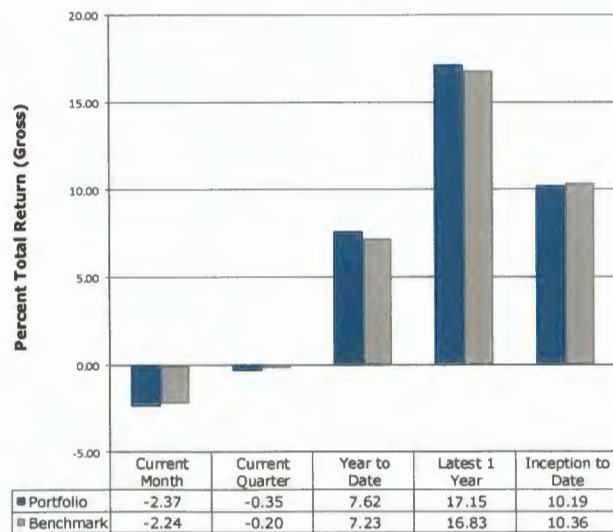
## ACCOUNT ACTIVITY

Portfolio Value on 08-31-21	7,953,582
Contributions	0
Withdrawals	-994
Change in Market Value	-203,848
Interest	4
Dividends	15,003

Portfolio Value on 09-30-21 7,763,747

## INVESTMENT PERFORMANCE

Current Account Benchmark:  
Equity Blend

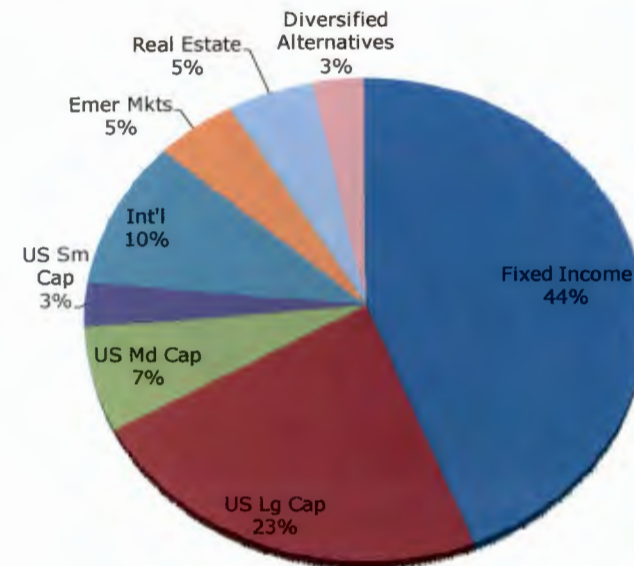


Performance is Annualized for Periods Greater than One Year

## MANAGEMENT TEAM

Client Relationship Manager:	Blake Phillips, CFA® Blake@apcm.net
Your Portfolio Manager:	Brandy Niclai, CFA®
Contact Phone Number:	907/272-7575

## PORTFOLIO COMPOSITION



# Kenai Peninsula Borough

## Finance Department

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### MEMORANDUM

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

**THRU:** Charlie Pierce, Borough Mayor *chi*

**THRU:** Brandi Harbaugh, Finance Director *BH*

**FROM:** Sarah Hostetter, Payroll Accountant *SH*

**DATE:** December 13, 2021

**RE:** Revenue-Expenditure Report – November 2021

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Attached is the Revenue-Expenditure Report of the General Fund for the month of November 2021. Please note that 41.67% of the year has elapsed, 65.82% of budgeted revenues have been collected, and 32.85% of budgeted expenditures have been made.

KENAI PENINSULA BOROUGH  
Revenue Report  
For the Period  
November 1 through November 30, 2021

ACCOUNT NUMBER	DESCRIPTION	ESTIMATED REVENUE	YEAR TO DATE RECEIPTS	MONTH TO DATE RECEIPTS	VARIANCE	% COLLECTED
31100	Real Property Tax	\$ 31,078,028	\$ 29,624,447	\$ 6,005,474	\$ (1,453,581)	95.32%
31200	Personal Property Tax	1,928,769	2,067,817	356,473	139,048	107.21%
31300	Oil Tax	6,680,655	6,678,548	671	(2,107)	99.97%
31400	Motor Vehicle Tax	642,580	82,015	12,924	(560,565)	12.76%
31510	Property Tax Penalty & Interest	697,431	184,900	94,932	(512,531)	26.51%
31610	Sales Tax	36,100,000	16,234,689	7,012,402	(19,865,311)	44.97%
33110	In Lieu Property Tax	3,100,000	-	-	(3,100,000)	0.00%
33117	Other Federal Revenue	160,000	86,409	86,409	(73,591)	54.01%
33220	Forestry Receipts	500,000	-	-	(500,000)	0.00%
34110	School Debt Reimbursement	1,277,544	-	-	(1,277,544)	0.00%
34221	Electricity & Phone Revenue	155,000	-	-	(155,000)	0.00%
34222	Fish Tax Revenue Sharing	500,000	25,526	24,202	(474,474)	5.11%
34210	Revenue Sharing	300,000	-	-	(300,000)	0.00%
37350	Interest on Investments	289,673	206,179	14,449	(83,494)	71.18%
39000	Other Local Revenue	279,791	176,124	47,662	(103,667)	62.95%
290	Solid Waste	802,000	244,738	5,139	(557,262)	30.52%
Total Revenues		\$ 84,491,471	\$ 55,611,392	\$ 13,660,738	\$ (28,880,079)	65.82%



KENAI PENINSULA BOROUGH  
Expenditure Report  
For the Period  
November 1 through November 30, 2021

DESCRIPTION	REVISED BUDGET	YEAR TO DATE EXPENDED	MONTH TO DATE EXPENDED	AMOUNT ENCUMBERED	AVAILABLE BALANCE	% EXPENDED
Assembly:						
Administration	\$ 495,116	\$ 245,992	\$ 51,974	\$ 44,230	\$ 204,894	49.68%
Clerk	585,302	217,102	39,200	14,983	353,217	37.09%
Elections	242,758	102,386	(3,264)	9,484	130,888	42.18%
Records Management	339,057	131,645	22,748	18,165	189,247	38.83%
Mayor Administration	807,292	227,208	41,087	1,534	578,550	28.14%
Purch/Contracting/Cap Proj	650,877	204,340	37,136	17,573	428,964	31.39%
Human Resources:						
Administration	759,927	291,812	45,161	2,468	465,647	38.40%
Print/Mail	194,590	65,954	16,620	29,267	99,368	33.89%
Custodial Maintenance	125,045	46,019	9,012	303	78,722	36.80%
Information Technology	2,136,877	688,013	140,030	34,487	1,414,377	32.20%
Emergency Management	1,026,834	347,902	44,554	72,198	606,734	33.88%
Legal Administration	1,443,741	269,111	37,946	315,559	859,071	18.64%
Finance:						
Administration	520,870	205,682	36,472	3,358	311,830	39.49%
Services	1,160,504	474,961	73,338	1,377	684,166	40.93%
Property Tax	1,144,165	425,378	62,493	110,428	608,359	37.18%
Sales Tax	1,005,193	455,660	63,976	1,744	547,789	45.33%
Assessing:						
Administration	1,384,355	532,606	78,240	41,817	809,931	38.47%
Appraisal	1,750,966	521,140	101,544	15,090	1,214,736	29.76%
Resource Planning:						
Administration	1,274,860	395,699	75,372	22,782	856,379	31.04%
GIS	690,573	280,981	26,162	3,067	406,525	40.69%
River Center	721,192	242,815	42,293	23,852	454,525	33.67%
Senior Citizens Grant Program	719,494	213,821	43,776	505,673	-	29.72%
School District Operations	53,910,125	19,898,788	1,286,338	-	34,011,337	36.91%
Solid Waste Operations	14,253,964	2,545,443	332,695	2,311,411	9,397,110	17.86%
Economic Development	400,000	28,986	-	175,000	196,014	7.25%
Non-Departmental	2,848,908	697,481	18,011	62,370	2,089,057	24.48%
Total Expenditures	\$ 90,592,586	\$ 29,756,927	\$ 2,722,915	\$ 3,838,221	\$ 56,997,438	32.85%

# Kenai Peninsula Borough

## Finance Department

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### MEMORANDUM

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

**THRU:** Charlie Pierce, Borough Mayor *CP*

**THRU:** Brandi Harbaugh, Finance Director *BH*

**FROM:** Sarah Hostetter, Payroll Accountant *SH*

**DATE:** December 13, 2021

**RE:** Budget Revisions – November 2021

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Attached is a budget revision listing for November 2021. The attached list contains budget revisions between major expenditure categories (i.e., maintenance & operations and capital outlay). Other minor transfers were processed between object codes within major expenditure categories.

**FINANCE - PROPERTY TAX & CASH MANAGEMENT**

To cover shipping costs for two check scanners recently purchased.

100-11440-00000-43140 (Postage & Freight)		\$366.00
100-11440-00000-48710 (Minor Office Equipment)	\$366.00	

**HUMAN RESOURCES - ADMINISTRATION**

To cover higher than budgeted cost for Attorney license renewal.

100-11230-00000-42210 (Operating Supplies)		\$85.00
100-11230-00000-43920 (Dues & Subscriptions)	\$85.00	

**KACHEMAK EMERGENCY SERVICES**

Transfer remaining budget from completed capital project to another project in the fund. Per Borough Code 5.01.100.

446-51810-21484-49999 (Project 21484 Contingency)		\$13,000.00
446-51810-22485-61990 (Admin Service Fee)	\$260.00	
446-51810-22485-49999 (Project 22485 Contingency)	\$12,740.00	

**KACHEMAK EMERGENCY SERVICES**

Moving funds from services to supplies. Repairs are continuing to be done in house to save money.

212-51810-00000-43750 (Vehicle Maintenance)		\$6,000.00
212-51810-00000-42360 (Motor Vehicle Repair Supplies)	\$6,000.00	

**LEGAL DEPARTMENT**

To replace old office furniture.

100-11310-00000-40110 (Regular Wages)		\$950.00
100-11310-00000-48720 (Minor Office Furniture)	\$950.00	

**MAINTENANCE DEPARTMENT**

To replace old ladder racks on work van.

241-41010-00000-42310 (Repair & Maintenance Supplies)		\$2,500.00
241-41010-00000-48740 (Minor Machines & Equipment)	\$2,500.00	

**NOVEMBER 2021 CONTINUED****INCREASE      DECREASE****MAINTENANCE DEPARTMENT**

To replace the wastewater evaporator system in the maintenance shop that failed unexpectedly.

241-41010-00000-42310 (Repair & Maintenance Supplies)		\$31,818.00
241-41010-00000-48311 (Machinery & Equipment)	\$31,818.00	

**SOLID WASTE - LANDFILL**

To cover the cost of landfill loader differential repairs.

290-32122-00000-42310 (Repair & Maintenance Supplies)		\$6,500.00
290-32122-00000-43750 (Vehicle Maintenance)	\$6,500.00	



Introduced by:	Mayor, Johnson
Date:	12/07/21
Hearing:	01/18/22
Action:	Postponed as Amended to 02/01/22
Vote:	5 Yes, 3 No, 1 Absent
Date:	02/01/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH  
ORDINANCE 2021-41**

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

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

- WHEREAS,** Goal 1 of the Mining and Minerals Processing section of the 1990 Kenai Peninsula Borough Coastal Management Program is to provide opportunities to explore, extract and process minerals, sand and gravel resources, while protecting environmental quality and other resource users; and
- WHEREAS,** an assembly subcommittee was formed in 2005 to review the material site code; and
- WHEREAS,** Ordinance 2006-01 (Substitute) codified as KPB 21.29 was adopted in 2006 after consideration of the subcommittee's report; and
- WHEREAS,** the planning department has been administering Ordinance 2006-01 (Substitute), codified as KPB 21.29 for 13 years; and
- WHEREAS,** KPB 21.25.040 requires a permit for the commencement of certain land uses within the rural district of the Kenai Peninsula Borough; and
- WHEREAS,** the planning department has recognized that certain provisions of the material site ordinance could be better clarified for the operators, public, and staff; and
- WHEREAS,** the planning commission and planning department received comments expressing concerns about dust, noise, safety, and aesthetics; and
- WHEREAS,** approximately 253 registered prior existing use material sites and approximately 99 conditional land use permits for material sites have been granted since 1996;
- WHEREAS,** the planning department receives numerous complaints regarding unreclaimed parcels registered as nonconforming prior existing material sites which have not been regulated by KPB; and
- WHEREAS,** the assembly established a material site work group by adoption of Resolution 2018-004 (Substitute) to engage in a collaborative discussion involving the public and industry to make recommendations regarding the material site code; and
- WHEREAS,** assembly Resolution 2018-025 extended the deadline for the final report to be submitted to the assembly, administration and planning commission to April 30, 2019; and
- WHEREAS,** certain additional conditions placed on material site permits would facilitate a reduction in the negative secondary impacts of material sites, e.g. dust, noise, safety, and unsightliness of material sites; and
- WHEREAS,** at its regularly scheduled meeting of November 12, 2019, the planning commission recommended approval by unanimous consent;

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

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

**21.25.030. - Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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



*Correctional community residential center (CCRC)* means a community residential center, other than a correctional institution, for the short-term or temporary detention of prisoners in transition from a correctional institution, performing restitution, or undergoing rehabilitation or recovery from a legal infirmity. CCRCs may not be used for detention of prisoners who pose a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision. The determination of whether a prisoner poses a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision shall be made by the commissioner of corrections for state prisoners and the United States Attorney General, or the U.S. Director of Bureau of Prisons for federal prisoners.

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

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

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

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

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

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

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

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

*Multi-purpose senior center* is a facility where persons 60 years of age or older are provided with services and activities suited to their particular needs. The

services and activities may include, but are not limited to, health examinations, legal assistance, recreation programs, general social activities, telephone reassurance programs, nutrition classes, meals at minimum cost, counseling, protective services, programs for shut-ins and education programs, and that complies with Alaska Statutes 47.60.010—47.60.090, as currently written or hereafter amended.

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

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

*Prisoner* means:

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

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

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

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

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

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

*Stable condition* means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of

renewable resources on the site within a reasonable period of time by natural processes.

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

*Topsoil* means material suitable for vegetative growth.

*Vicinity* means the same as the area of notification.

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

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

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

#### **CHAPTER 21.29. MATERIAL SITE PERMITS**

##### **21.29.010. Material extraction exempt from obtaining a permit.**

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

**21.29.020. Material extraction and activities requiring a permit.**

- A. *Counter permit.* A counter permit is required for material extraction which disturbs no more than 2.5 cumulative acres and does not enter the water table. Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension.
- B. *Conditional land use permit.* A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. A CLUP is required for materials processing. A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPS and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.

**21.29.030. Application procedure.**

- A. In order to obtain a counter permit or CLUP, an applicant shall first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application shall include the following items:
  - 1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
  - 2. Expected life span of the material site;
  - 3. A buffer plan consistent with KPB 21.29.050(A)(2);
  - 4. Reclamation plan consistent with KPB 21.29.060;
  - 5. The depth of excavation;
  - 6. Type of material to be extracted and type of equipment to be used;
  - 7. Any voluntary permit conditions the applicant proposes. Failure to include a proposed voluntary permit condition in the application does not preclude the applicant from proposing or agreeing to voluntary permit conditions at a later time;



8. Surface water protection measures, if any, for adjacent properties designed by a civil engineer, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;
9. A site plan and field verification prepared by a professional surveyor licensed and registered in the State of Alaska, including the following information:
  - a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
  - b. Proposed buffers consistent with KPB 21.29.050(A)(2), or alternate buffer plan;
  - c. Identification of all encumbrances, including, but not limited to easements;
  - d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to the issuance of the material site permit;
  - e. Anticipated haul routes;
  - f. Location and [DEPTH] elevation of test holes, and depth of groundwater, if encountered between May and December. At least one test hole per ten acres of excavated area is required to be dug. The test holes shall be at least four feet below the proposed depth of excavation;
  - g. Location of wells of adjacent property owners within 300 feet of the proposed parcel boundary;
  - h. Location of any water body on the parcel, including the location of any riparian wetland as determined by ["WETLAND MAPPING AND CLASSIFICATION OF THE KENAI LOWLAND, ALASKA" MAPS CREATED BY THE KENAI WATERSHED FORUM] best available data;
  - [I. SURFACE WATER PROTECTION MEASURES FOR ADJACENT PROPERTIES, INCLUDING THE USE OF DIVERSION CHANNELS, INTERCEPTION DITCHES, ON-SITE COLLECTION DITCHES, SEDIMENT PONDS AND TRAPS, AND SILT FENCE; PROVIDE DESIGNS FOR SUBSTANTIAL STRUCTURES; INDICATE WHICH

STRUCTURES WILL REMAIN AS PERMANENT FEATURES AT THE CONCLUSION OF OPERATIONS, IF ANY;]

[J]i. Location of any processing areas on parcel, if applicable;

[K]j. North arrow;

[L]k. The scale to which the site plan is drawn;

[M]l. Preparer's name, date and seal;

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

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

#### **21.29.040. Standards for sand, gravel or material sites.**

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:

1. Protects against the lowering of water sources serving other properties;
2. Protects against physical damage to [OTHER] adjacent properties;
3. [MINIMIZES] Protects against off-site movement of dust;
4. [MINIMIZES] Protects against noise disturbance to other properties;
5. [MINIMIZES] Protects against visual impacts of the material site; [AND]
6. Provides for alternate post-mining land uses[.];
7. Protects Receiving Waters against adverse effects to fish and wildlife habitat;
8. Protects against traffic impacts; and

9. Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.

**21.29.050. Permit conditions.**

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

1. [PARCEL]Permit boundaries. [ALL BOUNDARIES OF THE SUBJECT PARCEL] The buffers and any easements or right-of-way abutting the proposed permit area shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter. Field verification and staking will require the services of a professional land surveyor. Stakes shall be in place [AT TIME OF APPLICATION] prior to issuance of the permit.

- [2. *BUFFER ZONE.* A BUFFER ZONE SHALL BE MAINTAINED AROUND THE EXCAVATION PERIMETER OR PARCEL BOUNDARIES. WHERE AN EASEMENT EXISTS, A BUFFER SHALL NOT OVERLAP THE EASEMENT, UNLESS OTHERWISE CONDITIONED BY THE PLANNING DIRECTOR OR PLANNING COMMISSION.

- A. THE BUFFER ZONE SHALL PROVIDE AND RETAIN A BASIC BUFFER OF:

- I. 50 FEET OF UNDISTURBED NATURAL VEGETATION, OR

- II. A MINIMUM SIX-FOOT EARTHEN BERM WITH AT LEAST A 2:1 SLOPE, OR

- III. A MINIMUM SIX-FOOT FENCE.

- B. A 2:1 SLOPE SHALL BE MAINTAINED BETWEEN THE BUFFER ZONE AND EXCAVATION FLOOR ON ALL INACTIVE SITE WALLS. MATERIAL FROM THE AREA DESIGNATED FOR THE 2:1 SLOPE MAY BE REMOVED IF SUITABLE, STABILIZING MATERIAL IS REPLACED WITHIN 30 DAYS FROM THE TIME OF REMOVAL.

- C. THE PLANNING COMMISSION OR PLANNING DIRECTOR SHALL DESIGNATE ONE OR A COMBINATION OF THE ABOVE AS IT DEEMS APPROPRIATE. THE VEGETATION AND FENCE SHALL BE OF SUFFICIENT HEIGHT AND DENSITY TO PROVIDE VISUAL AND NOISE SCREENING OF THE PROPOSED USE AS DEEMED

APPROPRIATE BY THE PLANNING COMMISSION OR PLANNING DIRECTOR.

- D. BUFFERS SHALL NOT CAUSE SURFACE WATER DIVERSION WHICH NEGATIVELY IMPACTS ADJACENT PROPERTIES OR WATER BODIES. SPECIFIC FINDINGS ARE REQUIRED TO ALTER THE BUFFER REQUIREMENTS OF KPB 21.29.050(A)(2)(A) IN ORDER TO MINIMIZE NEGATIVE IMPACTS FROM SURFACE WATER DIVERSION. FOR PURPOSES OF THIS SECTION, SURFACE WATER DIVERSION IS DEFINED AS EROSION, FLOODING, DEHYDRATION OR DRAINING, OR CHANNELING. NOT ALL SURFACE WATER DIVERSION RESULTS IN A NEGATIVE IMPACT.
- E. AT ITS DISCRETION, THE PLANNING COMMISSION MAY WAIVE BUFFER REQUIREMENTS WHERE THE TOPOGRAPHY OF THE PROPERTY OR THE PLACEMENT OF NATURAL BARRIERS MAKES SCREENING NOT FEASIBLE OR NOT NECESSARY. BUFFER REQUIREMENTS SHALL BE MADE IN CONSIDERATION OF AND IN ACCORDANCE WITH EXISTING USES OF ADJACENT PROPERTY AT THE TIME OF APPROVAL OF THE PERMIT. THERE IS NO REQUIREMENT TO BUFFER THE MATERIAL SITE FROM USES WHICH COMMENCE AFTER THE APPROVAL OF THE PERMIT.]

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

- a. A buffer area of a maximum of 100 feet shall be established between the area of excavation and the parcel boundaries. The buffer area may include one or more of the following: undisturbed natural vegetation, a minimum six-foot fence, a minimum six-foot earthen berm with at least a 2/1 slope or a combination thereof.
- b. A 2:1 slope shall be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
- c. Where an easement exists, a buffer shall not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable.
- d. The vegetation and fence shall be of sufficient height and density to provide visual and noise screening of the proposed



use as deemed appropriate by the planning commission or the planning director.

- e. The buffer area may be reduced where the planning commission or planning director, as applicable, has approved an alternate buffer plan. The alternate buffer plan must consist of natural undisturbed vegetation, a minimum six-foot berm, or a minimum six-foot fence or a combination thereof; unless the permittee proposes another solution approved by the planning commission or planning director, as applicable, to meet this condition.
- f. The buffer requirements may be waived by the planning commission or planning director, as applicable, where the topography of the property or the placement of natural barriers makes screening not feasible or unnecessary.
- g. There is no requirement to buffer a material site from uses that commence after approval of the permit.
- h. When a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required.

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

4. *Water source separation.*

- a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.
- b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation [FROM]between extraction operations and the seasonal high water table be maintained.
- c. All CLUPS shall be issued with a condition which requires that a [TWO] four-foot vertical separation [FROM]between

extraction operations and the seasonal high water table be maintained.

- d. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.
5. *Excavation in the water table.* Excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission based on the following:
- a. Certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.
  - b. The installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate, and water elevation.
  - c. Groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three-month intervals by a qualified independent civil engineer or professional hydrogeologist, for at least one year prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
  - d. Operations shall not breach an aquifer-confining layer.
6. *Waterbodies.*
- a. An undisturbed buffer shall be left and no earth material extraction activities shall take place within [100] 200 linear feet from excavation limits and the ordinary high water level of surface water bodies such as a lake, river, stream, [OR OTHER WATER BODY, INCLUDING] riparian wetlands and mapped floodplains as defined in KPB 21.06. This regulation shall not apply to man-made waterbodies being constructed during the course of the materials extraction activities. In order to prevent

discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.

- b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.
7. *Fuel storage.* Fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
8. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads as required by KPB 14.40.175 and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
9. *Subdivision.* Any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit. The planning director may issue a written exemption from the amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a material site and all original permit conditions can be met.
10. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
11. *Hours of operation.* [ROCK CRUSHING EQUIPMENT SHALL NOT BE OPERATED BETWEEN 10:00 P.M. AND 6:00 A.M.]
  - a. Processing equipment shall not be operated between 7:00 p.m. and 6:00 a.m.
  - b. The planning commission may grant exceptions to increase the hours of operation and processing based on surrounding land uses, topography, screening the material site from properties in the vicinity and conditions placed on the permit by the planning commission to mitigate the noise, dust and visual impacts caused by the material site.

12. *Reclamation.*

- a. Reclamation shall be consistent with the reclamation plan approved by the planning commission or planning director as appropriate in accord with KPB 21.29.060.
- b. [AS A CONDITION OF ISSUING THE PERMIT, THE APPLICANT SHALL SUBMIT A RECLAMATION PLAN AND POST A BOND TO COVER THE ANTICIPATED RECLAMATION COSTS IN AN AMOUNT TO BE DETERMINED BY THE PLANNING DIRECTOR. THIS BONDING REQUIREMENT SHALL NOT APPLY TO SAND, GRAVEL OR MATERIAL SITES FOR WHICH AN EXEMPTION FROM STATE BOND REQUIREMENTS FOR SMALL OPERATIONS IS APPLICABLE PURSUANT TO AS 27.19.050.] The applicant shall operate the material site consistent with the approved reclamation plan and provide bonding pursuant to 21.29.060(B). This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.

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

14. [~~VOLUNTARY~~]Volunteered *permit conditions.* Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission for CLUPs or the planning director for counter permits. Such conditions must be consistent with the standards set forth in KPB 21.29.040(A). Planning commission approval of such conditions shall be contingent upon a finding that the conditions will be in the best interest of the borough and the surrounding property owners. [~~VOLUNTARY~~] Volunteered permit



conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in [VOLUNTARY] volunteered permit conditions may be proposed [AT] by permit [RENEWAL OR AMENDMENT] modification.

15. *Signage.* For permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access, whichever is more visible. Sign dimensions shall be no more than 15" by 15" and must contain the following information: the phrase "Permitted Material Site" along with the permittee's business name and a contact phone number.
16. *Appeal.* No clearing of vegetation shall occur within the 100-foot maximum buffer area from the permit boundary nor shall the permit be issued or operable until the deadline for the appeal, pursuant to KPB 21.20, has expired.
17. *Sound level.*
  - a. No sound resulting from the materials extraction activities shall create a sound level, when measured at or within the property boundary of the adjacent land, that exceeds 75 dB(A).
  - b. For any sound that is of short duration between the hours of 7 a.m. and 7 p.m. the levels may be increased by:
    - i. Five dB(A) for a total of 15 minutes in any one hour; or
    - ii. Ten dB(A) for a total of five minutes in any hour; or
    - iii. Fifteen db(A) for a total of one and one-half minutes in any one-hour period.
  - c. At its discretion, the planning commission or planning director, as applicable, may reduce or waive the sound level requirements on any or all property boundaries. Sound level requirements shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
  - d. Mandatory condition KPB 21.29.050(A)(17) shall expire 365 days from adoption of KPB 21.29.050(A)(17) unless extended or modified by the assembly.

18. Reverse signal alarms. Reverse signal alarms, used at the material site on loaders, excavators, and other earthmoving equipment shall be more technically advanced devices; such as, a multi-frequency “white noise” alarms rather than the common, single (high-pitch) tone alarms. At its discretion, the planning commission or planning director, as applicable, may waive this requirement or a portion of this requirement. The waiver of this requirement shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
19. Ingress and egress. The planning commission or planning director may determine the points of ingress and egress for the material site. The permittee is not required to construct haul routes outside the parcel boundaries of the material site. Driveway authorization must be acquired, from either the state through an “Approval to Construct” or a borough road service area as appropriate, prior to issuance of a material site permit when accessing a public right-of-way.
20. Dust suppression. Dust suppression shall be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on haul routes. Based on surrounding land uses the planning commission or planning director, as applicable, may waive or reduce the requirement for dust suppression on haul routes.
21. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8) must be approved by a licensed civil engineer.
22. Groundwater elevation. All material sites must maintain one monitoring tube per ten acres of excavated area four feet below the proposed excavation.
23. Setback. Material site excavation areas shall be 250-feet from the property boundaries of any local option zoning district, existing public school ground, private school ground, college campus, child care facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation shall be included in the 250-foot setback.

#### **21.29.055. Decision.**

The planning commission or planning director, as applicable, shall approve permit applications meeting the mandatory conditions or shall disapprove permit applications that do not meet the mandatory conditions. The decision shall include written findings supporting the decision, and when applicable, there shall be written findings supporting any site-specific alterations to the mandatory condition as

specifically allowed by KPB 21.29.050(A)(2)(a), (2)(c), (2)(d), (2)(e), (2)(g), (3), (4)(d), (5), (11)(b), (12), (14), (17)(c), (18), (19), and (20) and as allowed for the KPB 21.29.060 reclamation plan.

**21.29.060. Reclamation plan.**

- A. All material site permit applications require an overall reclamation plan along with a five-year reclamation plan. A site plan for reclamation shall be required including a scaled drawing with finished contours. A five-year reclamation plan must be submitted with a permit extension request.
- B. The applicant shall revegetate with a non-invasive plant species and reclaim all disturbed land [UPON EXHAUSTING THE MATERIAL ON-SITE, OR WITHIN A PRE-DETERMINED TIME PERIOD FOR LONG-TERM ACTIVITIES, SO AS TO LEAVE THE LAND IN A STABLE CONDITION. RECLAMATION MUST OCCUR FOR ALL EXHAUSTED AREAS OF THE SITE EXCEEDING FIVE ACRES BEFORE A FIVE-YEAR RENEWAL PERMIT IS ISSUED, UNLESS OTHERWISE REQUIRED BY THE PLANNING COMMISSION. IF THE MATERIAL SITE IS ONE ACRE OR LESS IN SIZE AND HAS BEEN GRANTED A CLUP DUE TO EXCAVATION IN THE WATER TABLE, RECLAMATION MUST BE PERFORMED AS SPECIFIED BY THE PLANNING COMMISSION OR PLANNING DIRECTOR IN THE CONDITIONAL USE OR COUNTER PERMIT] within the time period approved with the reclamation plan so as to leave the land in a stable condition. Bonding shall be required at \$2,000.00 per acre for all acreage included in the current five-year reclamation plan. In the alternative, the planning director may accept a civil engineer's estimate for determining the amount of bonding. If the applicant is bonded with the state, the borough's bonding requirement is waived. Compliance with reclamation plans shall be enforced under KPB 21.50.
- C. The following measures must be considered in the [PREPARING] preparation, approval and [IMPLEMENTING] implementation of the reclamation plan, although not all will be applicable to every reclamation plan.
  - 1. Topsoil that is not promptly redistributed to an area being reclaimed will be separated and stockpiled for future use. [THIS MATERIAL WILL BE PROTECTED FROM EROSION AND CONTAMINATION BY ACIDIC OR TOXIC MATERIALS AND PRESERVED IN A CONDITION SUITABLE FOR LATER USE.]
  - 2. The area will be backfilled, graded and recontoured using strippings, overburden, and topsoil [TO A CONDITION THAT ALLOWS FOR THE REESTABLISHMENT OF RENEWABLE RESOURCES ON THE SITE WITHIN A REASONABLE PERIOD OF TIME. IT WILL BE STABILIZED TO A CONDITION THAT WILL ALLOW SUFFICIENT MOISTURE FOR

REVEGETATION] so that it will be stabilized to a condition that will allow for the revegetation as required by KPB 21.29.060(B).

3. [SUFFICIENT QUANTITIES OF STOCKPILED OR IMPORTED TOPSOIL WILL BE SPREAD OVER THE RECLAIMED AREA TO A DEPTH OF FOUR INCHES TO PROMOTE NATURAL PLANT GROWTH THAT CAN REASONABLY BE EXPECTED TO REVEGETATE THE AREA WITHIN FIVE YEARS. THE APPLICANT MAY USE THE EXISTING NATURAL ORGANIC BLANKET REPRESENTATIVE OF THE PROJECT AREA IF THE SOIL IS FOUND TO HAVE AN ORGANIC CONTENT OF 5% OR MORE AND MEETS THE SPECIFICATION OF CLASS B TOPSOIL REQUIREMENTS AS SET BY ALASKA TEST METHOD (ATM) T-6.] The [MATERIAL] topsoil used for reclamation shall be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by a licensed engineer.
4. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation shall be removed from the site, buried or burned. Topsoil and other organics will be spread on the backfilled surface to inhibit erosion and promote natural revegetation.
5. [PEAT AND T]Topsoil mine operations shall ensure a minimum of [TWO] four inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).
6. Ponding may be used as a reclamation method as approved by the planning commission.

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

#### **21.29.070. Permit extension and revocation.**

- A. Conditional land use permittees must submit a request in writing for permit extension every five years after the permit is issued. Requests for permit extension must be made at least 30 days prior to permit expiration. Counter permittees must submit any request for a 12-month extension at least 30 days prior to the expiration of the original 12-month permit period.
- B. A permit extension certificate for a CLUP may be granted by the planning director after 5 years, and after one year for a counter permit where no modification to operations or conditions are proposed.



- C. Permit extension may be denied if: (1) reclamation required by this chapter and the original permit has not been performed; (2) the permittee is otherwise in noncompliance with the original permit conditions; or (3) the permittee has had a permit violation in the last two years and has not fulfilled compliance requests.
- D. A modification application shall be processed pursuant to KPB 21.29.030-050 with public notice given as provided by KPB 21.25.060 when operators request modification of their permit conditions based on changes in operations set forth in the modification application.
- E. There shall be no fee for permit extensions approved by the planning director. The fee for a permit modification processed under KPB 21.29.070(D) will be the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.
- F. Failure to submit a request for extension will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KPB 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.
- G. Permits may be revoked pursuant to KPB 21.50. 21.29.080. - Permit termination.

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

#### **21.29.090. Permit modifications.**

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

#### **21.29.100. Recordation.**

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

#### **21.29.110. Violations.**

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

#### **21.29.120. Prior existing uses.**

- A. Material sites are not held to the standards and conditions of a CLUP if a prior existing use (PEU) determination was granted for the parcel in accordance with KPB 21.29.120(B). To qualify as a PEU, a parcel's use as a material site must have commenced or have been operated after May 21, 1986, and prior to May 21, 1996, provided that the subject use continues in the same location. In no event shall a prior existing use be expanded beyond the smaller of the lot, block, or tract lines as they existed on May 21, 1996. If a parcel is further subdivided after May 21, 1996, the pre-existing use may not be expanded to any lot, tract, or parcel where extraction had not occurred before or on February 16, 1999. If a parcel is subdivided where extraction has already occurred, the prior existing use is considered abandoned, and a CLUP must be obtained for each parcel intended for further material site operations. The parcel owner may overcome this presumption of abandonment by showing that the subdivision is not inconsistent with material site operation. If a parcel subject to a prior existing use is conveyed, the prior existing use survives the conveyance.
- B. Owners of sites must have applied to be registered as a prior existing use prior to January 1, 2001.
- C. [ANY PRIOR EXISTING USE THAT HAS NOT OPERATED AS A MATERIAL SITE BETWEEN MAY 21, 1996, AND MAY 21, 2011, IS CONSIDERED ABANDONED AND MUST THEREAFTER COMPLY WITH THE PERMIT REQUIREMENTS OF THIS CHAPTER. THE PLANNING DIRECTOR SHALL DETERMINE WHETHER A PRIOR EXISTING USE HAS BEEN ABANDONED. AFTER GIVING NOTICE TO THE PARCEL OWNER THAT A PEU IS CONSIDERED ABANDONED, A PARCEL OWNER MAY

PROTEST THE TERMINATION OF THE PEU BY FILING WRITTEN NOTICE WITH THE PLANNING DIRECTOR ON A FORM PROVIDED BY THE PLANNING DEPARTMENT. WHEN A PROTEST BY A PARCEL OWNER IS FILED, NOTICE AND AN OPPORTUNITY TO MAKE WRITTEN COMMENTS REGARDING PRIOR EXISTING USE STATUS SHALL BE ISSUED TO OWNERS OF PROPERTY WITHIN A ONE-HALF MILE RADIUS OF THE PARCEL BOUNDARIES OF THE SITE. THE OWNER OF THE PARCEL SUBJECT TO THE PRIOR EXISTING USE MAY SUBMIT WRITTEN INFORMATION, AND THE PLANNING DIRECTOR MAY GATHER AND CONSIDER ANY INFORMATION RELEVANT TO WHETHER A MATERIAL SITE HAS OPERATED. THE PLANNING DIRECTOR MAY CONDUCT A HEARING IF HE OR SHE BELIEVES IT WOULD ASSIST THE DECISION-MAKING PROCESS. THE PLANNING DIRECTOR SHALL ISSUE A WRITTEN DETERMINATION WHICH SHALL BE DISTRIBUTED TO ALL PERSONS MAKING WRITTEN COMMENTS. THE PLANNING DIRECTOR'S DECISION REGARDING TERMINATION OF THE PRIOR EXISTING USE STATUS MAY BE APPEALED TO THE PLANNING COMMISSION WITHIN 15 DAYS OF THE DATE OF THE NOTICE OF DECISION.]

The owner of a material site that has been granted a PEU determination shall provide proof of compliance with AS 27.19.030 – 050 concerning reclamation to the planning department no later than July 1, 2022. The proof shall consist of an Alaska Department of Natural Resources (DNR) approved reclamation plan and receipt for bonding or a letter of intent filed with DNR.

1. The planning department may request proof of continued compliance with AS 27.19.030 – 050 on an annual basis.
2. Pursuant to KPB 21.29.110 the enforcement process and remedies set forth in KPB 21.50 shall govern if the proof that the statutory requirements contained in AS 27.19.030-050 is not provided to the planning department.

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

**21.50.055. Fines.**

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

<b>CODE CHAPTER &amp; SECTION</b>	<b>VIOLATION DESCRIPTION</b>	<b>DAILY FINE</b>
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



<b>CODE CHAPTER &amp; SECTION</b>	<b>VIOLATION DESCRIPTION</b>	<b>DAILY FINE</b>
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

<b>CODE CHAPTER &amp; SECTION</b>	<b>VIOLATION DESCRIPTION</b>	<b>DAILY FINE</b>
KPB 21.44.160(C)	Violation of Development Standards/Single Family Zoning/Local Option Zoning	\$300.00
KPB 21.44.165(A)(B)	Prohibited use	\$300.00
KPB 21.44.165(C)	Violation of Development Standards/Small Lot Residential Zoning/Local Option Zoning	\$300.00
KPB 21.44.170(A)(B)	Prohibited use	\$300.00
KPB 21.44.170(C)	Violation of Development Standards/Rural Residential District/Local Option Zoning	\$300.00
KPB 21.44.175(B)(C)	Prohibited Use	\$300.00
KPB 21.44.175(D)	Violation of Development Standards/Residential Waterfront	\$300.00
KPB 21.44.180(A)(B)	Prohibited Use	\$300.00
KPB 21.44.180(C)	Violation of Development Standards/Multi-Family Residential District/Local Option Zoning	\$300.00
KPB 21.44.190(A)(B)	Prohibited Use	\$300.00
KPB 21.44.190(C)	Violation of Development Standards/Industrial District/Local Option Zoning	\$300.00
KPB 21.46.030(b)	Failure to maintain bear-resistant garbage cans/Local option zone/Birch and Grove Ridge subdivisions Rural Residential District	\$300.00
KPB 21.50.100(F)	Removal of posted enforcement notice	\$300.00
KPB 21.50.100(G)	Violation of enforcement notice	\$1,000.00
KPB 21.50.130(I)	Violation of an enforcement order	\$1,000.00

**SECTION 4.** That this ordinance shall become effective upon its enactment.

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

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Brent Johnson, Assembly President

ATTEST:

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Johani Blankenship, MMC, Borough Clerk

Yes: Bjorkman, Derkevorkian, Elam, Tupper, Johnson

No: Chesley, Cox, Ecklund

Absent: Hibbert

**[Clerk's Note: At the 01/18/22 meeting this amendment failed 4 Yes, 4 No, 1 Absent. Notice of reconsideration was given by Mr. Elam.]**

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Bill Elam, Assembly Member *BE*

**DATE:** January 18, 2022

**SUBJECT:** Elam Amendment #2 to Ordinance 2021-41, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures (Johnson, Mayor)

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

- Amend Section 2, KPB 21.29.040(A), as follows:

### **21.29.040. Standards for sand, gravel or material sites.**

- A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. ~~**[Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:]**~~ **The mandatory conditions of 21.29.050 are express conditions precedent to the granting of any conditional land use permit and after a public hearing, the planning commission must find, in writing, that through imposition of all the mandatory conditions under KPB 21.29.050 that the following standards are met:**
1. ~~**[Protects against the lowering of water sources serving other properties;]**~~ **The use is not inconsistent with the applicable comprehensive plan;**
  2. ~~**[Protects against physical damage to [other] adjacent properties;]**~~ **The use will preserve the value, spirit, character, and integrity of the surrounding area;**



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Date: January 18, 2022

RE: Elam Amendment #2 to O2021-41

3. ~~[[Minimizes] Protects against off-site movement of dust;]~~  
The applicant has met all other requirements of this chapter pertaining to the use in question;
4. ~~[[Minimizes] Protects against noise disturbance to other properties;]]~~  
That granting the permit will not be harmful to the public health, safety and general welfare; and
5. ~~[[Minimizes] Protects against visual impacts of the material site; [and]]~~  
The sufficient setbacks, lot area, buffers or other safeguards are being provided to meet the conditions listed in KPB 21.29.050.
- ~~[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.]~~

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Cindy Ecklund, Assembly Member <sup>1st</sup>  
Mike Tupper, Assembly Member <sup>MT</sup>

**DATE:** January 18, 2022

**SUBJECT:** Amendment to Ordinance 2021-41, Amending KPB 21.29, KPB 21.25,  
and KPB 21.50.055 Regarding Material Site Permits, Applications,  
Conditions, and Procedures (Johnson, Mayor)

---

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

- Amend Section 2, KPB 21.29.050(A)(2)(a), as follows:

**21.29.050. Permit conditions.**

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

...

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~~ **a minimum six-foot earthen berm with at least a 2/1 slope** or a combination thereof.

**Clerk's Note: This amendment was approved at the 01/18/22 meeting. 8 Yes, 0 No, 1 Absent**

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January 18, 2021

Re: Ecklund and Tupper Amendments to O2021-41

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- Amend Section 2, KPB Section 21.29.050(A)(2)(c), as follows:

**21.29.050. Permit conditions.**

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

...

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

**Clerk's Note: This amendment was approved at the 01/18/22 meeting. 5 Yes, 3 No, 1 Absent**

- c. Where an easement exists, a buffer shall not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable. **d. The vegetation and fence shall be of sufficient height and density to provide visual and noise screening of the proposed use as deemed appropriate by the planning commission or the planning director.**

- Amend Section 2, KPB Section 21.29.050(A)(2)(d), as follows:

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

...

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

...

- 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]~~, **a minimum six-foot earthen berm with at least a 2/1 slope** or a minimum six-foot fence or a combination thereof; unless the permittee proposes another solution approved by the planning

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January 18, 2021

Re: Ecklund and Tupper Amendments to O2021-41

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commission or planning director, as applicable, to meet this condition.

➤ Amend Section 2, KPB 21.29.055, as follows:

**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.]~~

The planning commission or planning director, as applicable, shall approve permit applications whereby mandatory standards under KPB 21.29.040 have been met through implementation of imposed and volunteered conditions set forth in KPB 21.29.050, or shall disapprove permit applications when the imposed and volunteered conditions do not meet the mandatory standards in KPB 21.29.040.

The decision shall include written findings detailing how the imposed and volunteered condition under KPB 21.29.050 meet, or do not meet the mandatory standards set forth in KPB 21.29.040, and evidence to support those findings. 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.

Your consideration of these amendments is appreciated.



Introduced by:	Elam, Derkevorkian
Substitute Introduced:	02/01/22
O2021-41 (Mayor, Johnson)	See Original Ordinance for Prior History
Action:	
Vote:	

**KENAI PENINSULA BOROUGH  
ORDINANCE 2021-41  
(ELAM, DERKEVORKIAN) SUBSTITUTE**

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

- WHEREAS,** Goal 2, Focus Area: Land Use, Objective A of the 2019 Kenai Peninsula Borough Comprehensive Plan is to establish policies to minimize land use conflicts, protect natural systems, and support individual land use freedoms; and
- WHEREAS,** Goal 2, Focus Area: Land Use, Objective A, Strategy 2 of the 2019 Comprehensive Plan is to update the Borough’s existing conditional use regulations for material extraction to better address reoccurring land use conflicts; and
- WHEREAS,** Goal 2, Focus Area: Land Use, Objective A, Strategy 2a of the 2019 Comprehensive Plan is to clarify the broad purpose of the conditional use process and clear parameters for allowable conditional uses that include reasonable, project-specific conditions that reduce impacts on surrounding use; and
- WHEREAS,** Goal 2, Focus Area: Land Use, Objective A, Strategy 2d of the 2019 Comprehensive Plan is to complete improvements to the rules guiding gravel extraction, with the goal of providing an appropriate balance between providing access to affordable materials for development and quality of life for borough residents; and
- WHEREAS,** Goal 1 of the Mining and Minerals Processing section of the 1990 Kenai Peninsula Borough Coastal Management Program is to provide opportunities to explore, extract and process minerals, sand and gravel resources, while protecting environmental quality and other resource users; and
- WHEREAS,** an assembly subcommittee was formed in 2005 to review the material site code; and
- WHEREAS,** Ordinance 2006-01 (Substitute) codified as KPB 21.29 was adopted in 2006 after consideration of the subcommittee’s report; and
- WHEREAS,** the planning department has been administering Ordinance 2006-01 (Substitute), codified as KPB 21.29 for 13 years; and

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

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

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

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

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

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

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

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

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

**21.25.030. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Correctional community residential center (CCRC)* means a community residential center, other than a correctional institution, for the short-term or temporary detention of prisoners in transition from a correctional institution, performing restitution, or undergoing rehabilitation or recovery from a legal infirmity. CCRCs may not be used for detention of prisoners who pose a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision. The determination of whether a prisoner poses a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision shall be made by the commissioner of corrections for state prisoners and the United States Attorney General, or the U.S. Director of Bureau of Prisons for federal prisoners.

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

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



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

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

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

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

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

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

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

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

*Prisoner* means:

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

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

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

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

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

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

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

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

*Topsoil* means material suitable for vegetative growth.

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

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

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

#### **CHAPTER 21.29. MATERIAL SITE PERMITS**

##### **21.29.010. Material extraction exempt from obtaining a permit.**

- A. Material extraction which disturbs an area of less than one acre that is not in a mapped flood plain or subject to 21.29.010(B), does not enter the water table, and does not cross property boundaries, does not require a permit. There will be no excavation within 20 feet of a right-of-way or within ten feet of a lot line.
- B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood

Service Area does not require a permit, however, operators subject to this exemption shall provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations.

- C. A prior existing use under KPB 21.29.120 does not require a material extraction permit, but a floodplain development permit is required for all activities within any mapped special flood hazard area.
- D. Material extraction incidental to site development does not require a permit when an approved site development plan is on file with the planning department. Site development plans are approved by the planning director and are valid for one year. The site development plan may be renewed on an annual basis subject to the planning director's approval.

#### **21.29.020. Material extraction and activities requiring a permit.**

- A. *Counter permit.* A counter permit is required for material extraction which disturbs no more than 2.5 cumulative acres and does not enter the water table. Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension.
- B. *Conditional land use permit.* A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. [A CLUP IS REQUIRED FOR MATERIALS PROCESSING.] A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPS and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling

#### **21.29.030. Application procedure.**

- A. In order to obtain a counter permit or CLUP, an applicant shall first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application shall include the following items:
  - 1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;

2. Expected life span of the material site;
3. A buffer plan consistent with KPB 21.29.050(A)(2);
4. Reclamation plan consistent with KPB 21.29.060;
5. The depth of excavation;
6. Type of material to be extracted and type of equipment to be used;
7. Any voluntary permit conditions the applicant proposes. Failure to include a proposed voluntary permit condition in the application does not preclude the applicant from proposing or agreeing to voluntary permit conditions at a later time;
8. Surface water protection measures, if any, for adjacent properties designed by a SWPPP certified individual, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;
9. A site plan prepared by the site operator and field verification prepared by a professional surveyor licensed and registered in the State of Alaska, including the following information:
  - a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
  - b. Proposed buffers consistent with KPB 21.29.050(A)(2), or alternate buffer plan;
  - c. Identification of all encumbrances, including, but not limited to easements;
  - d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to the issuance of the material site permit;
  - e. Anticipated haul routes;
  - f. Location and [DEPTH] elevation of test holes, and depth of groundwater, if encountered between May and December. At least one test hole per ten acres of excavated area is required to be dug.



- g. Location of wells of adjacent property owners within [300]  
200 feet of the proposed parcel boundary;
- h. Location of any water body on the parcel,
- [I. SURFACE WATER PROTECTION MEASURES FOR ADJACENT PROPERTIES, INCLUDING THE USE OF DIVERSION CHANNELS, INTERCEPTION DITCHES, ON-SITE COLLECTION DITCHES, SEDIMENT PONDS AND TRAPS, AND SILT FENCE; PROVIDE DESIGNS FOR SUBSTANTIAL STRUCTURES; INDICATE WHICH STRUCTURES WILL REMAIN AS PERMANENT FEATURES AT THE CONCLUSION OF OPERATIONS, IF ANY;]
- [J]i. Location of any processing areas on parcel, if applicable;
- [K]j. North arrow;
- [L]k. The scale to which the site plan is drawn;
- [M]l. Preparer's name, date
- [N]m. Field verification shall include staking the boundary of the parcel at sequentially visible intervals. The planning director may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious or staking is unnecessary.

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

#### **21.29.040. Standards for sand, gravel or material sites.**

- A. These material site regulations are intended to Minimize aquifer disturbance, road damage, physical damage to adjacent properties, dust, and noise. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:
  - 1. [PROTECTS AGAINST] Minimizes the lowering of water sources serving other properties;
  - 2. [PROTECTS AGAINST] Minimizes physical damage to [OTHER] adjacent properties;

3. Minimizes off-site movement of dust;
4. Minimizes noise disturbance to other properties;
5. [MINIMIZES VISUAL IMPACTS] Provides for alternate post-mining land uses.

**21.29.050. Permit conditions.**

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

1. [~~PARCEL~~]Permit boundaries. [ALL BOUNDARIES OF THE SUBJECT PARCEL] The buffers and any easements or right-of-way abutting the proposed permit area shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter. Field verification and staking will require the services of a professional land surveyor. Stakes shall be in place [AT TIME OF APPLICATION] prior to issuance of the permit.

[2. BUFFER ZONE. A BUFFER ZONE SHALL BE MAINTAINED AROUND THE EXCAVATION PERIMETER OR PARCEL BOUNDARIES. WHERE AN EASEMENT EXISTS, A BUFFER SHALL NOT OVERLAP THE EASEMENT, UNLESS OTHERWISE CONDITIONED BY THE PLANNING DIRECTOR OR PLANNING COMMISSION.

A. THE BUFFER ZONE SHALL PROVIDE AND RETAIN A BASIC BUFFER OF:

I. 50 FEET OF UNDISTURBED NATURAL VEGETATION, OR

II. A MINIMUM TEN FOOT EARTHEN BERM WITH AT LEAST A 2:1 SLOPE, OR

III. A MINIMUM SIX-FOOT FENCE.

B. A 2:1 SLOPE SHALL BE MAINTAINED BETWEEN THE BUFFER ZONE AND EXCAVATION FLOOR ON ALL INACTIVE SITE WALLS. MATERIAL FROM THE AREA DESIGNATED FOR THE 2:1 SLOPE MAY BE REMOVED IF SUITABLE, STABILIZING MATERIAL IS REPLACED WITHIN 90 DAYS FROM THE TIME OF REMOVAL.

C. THE PLANNING COMMISSION OR PLANNING DIRECTOR SHALL DESIGNATE ONE OR A COMBINATION OF THE ABOVE AS IT DEEMS APPROPRIATE. THE VEGETATION AND FENCE SHALL BE OF SUFFICIENT HEIGHT AND DENSITY TO PROVIDE VISUAL AND NOISE SCREENING OF THE PROPOSED USE AS DEEMED

APPROPRIATE BY THE PLANNING COMMISSION OR PLANNING DIRECTOR.

- D. BUFFERS SHALL NOT CAUSE SURFACE WATER DIVERSION WHICH NEGATIVELY IMPACTS ADJACENT PROPERTIES OR WATER BODIES. SPECIFIC FINDINGS ARE REQUIRED TO ALTER THE BUFFER REQUIREMENTS OF KPB 21.29.050(A)(2)(A) IN ORDER TO MINIMIZE NEGATIVE IMPACTS FROM SURFACE WATER DIVERSION. FOR PURPOSES OF THIS SECTION, SURFACE WATER DIVERSION IS DEFINED AS EROSION, FLOODING, DEHYDRATION OR DRAINING, OR CHANNELING. NOT ALL SURFACE WATER DIVERSION RESULTS IN A NEGATIVE IMPACT.
- E. AT ITS DISCRETION, THE PLANNING COMMISSION MAY WAIVE BUFFER REQUIREMENTS WHERE THE TOPOGRAPHY OF THE PROPERTY OR THE PLACEMENT OF NATURAL BARRIERS MAKES SCREENING NOT FEASIBLE OR NOT NECESSARY. BUFFER REQUIREMENTS SHALL BE MADE IN CONSIDERATION OF AND IN ACCORDANCE WITH EXISTING USES OF ADJACENT PROPERTY AT THE TIME OF APPROVAL OF THE PERMIT. THERE IS NO REQUIREMENT TO BUFFER THE MATERIAL SITE FROM USES WHICH COMMENCE AFTER THE APPROVAL OF THE PERMIT.]

2. *Buffer Area.*

- a. A 2:1 slope shall be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 90 days from the time of removal.
- b. The buffer area may be reduced where the planning commission or planning director, as applicable, has approved an alternate buffer plan introduced by the applicant. The alternate buffer plan must consist of natural undisturbed vegetation, or a minimum ten foot berm, or a minimum six-foot fence or a combination thereof, consisting of only one option in a single geographical location; unless the permittee proposes another solution approved by the planning commission or planning director, as applicable, to meet this condition.
- c. The buffer requirements may be waived by the planning commission or planning director, as applicable, where the topography of the property or the placement of natural barriers makes screening not feasible or unnecessary.

- d. There is no requirement to buffer a material site from uses that commence after approval of the permit.
- 3. *Processing.* In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of adjacent properties at the time.
- 4. *Water source separation.*
  - a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.
  - b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation [FROM THE SEASONAL HIGH WATER TABLE BE MAINTAINED] an excavation distance a maximum of 15 feet below the seasonal high-water table must be maintained under these conditions:
    - 1. No dewatering is allowed.
    - 2. The edge of any water body must be 200 feet from any DEC septic or well.
    - 3. A spill response kit must be maintained onsite.
    - 4. Operations shall stay 2 foot above an aquifer-confining layer.
    - 5. A 200-foot separation from any water body and any stored hazardous material.
  - [C. ALL CLUPS SHALL BE ISSUED WITH A CONDITION WHICH REQUIRES THAT A TWO-FOOT VERTICAL SEPARATION FROM THE SEASONAL HIGH WATER TABLE BE MAINTAINED.]
  - c. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.



5. *Excavation in the water table.* Excavation in the water table greater than ~~[300]~~200 horizontal feet of a water source and 15 feet below water table may be permitted with the approval of the planning commission based on the following:
  - a. Certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.
  - b. The installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate, and water elevation.
  - c. Groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three-month intervals by a qualified independent civil engineer or professional hydrogeologist, for at least one year prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
  - d. Operations shall not breach an aquifer-confining layer.
6. *Waterbodies.*
  - a. An undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet [FROM] of excavation limits and the ordinary high water level of surface water bodies such as a lake, river, stream, [OR OTHER WATER BODY, INCLUDING] riparian wetlands [AND MAPPED FLOODPLAINS AS DEFINED IN KPB 21.06]. This regulation shall not apply to ponds less than one acre on private land, man-made waterbodies being constructed during the course of the materials extraction activities. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.
  - b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.
7. *Fuel storage.* Fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for

uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface. Double wall tanks are also acceptable.

8. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads as required by KPB 14.40.175 and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
9. *Subdivision.* Any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit. The planning director may issue a written exemption from the amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a material site and all original permit conditions can be met.
10. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
11. *Hours of operation.* [ROCK CRUSHING EQUIPMENT SHALL NOT BE OPERATED BETWEEN 10:00 P.M. AND 6:00 A.M.]
  - a. Processing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
  - b. The planning commission may grant exceptions to increase the hours of operation and processing based on surrounding land uses, topography, screening the material site from properties in the vicinity and conditions placed on the permit by the planning commission to mitigate the noise, dust and ~~visual impacts~~ caused by the material site.
12. *Reclamation.*
  - a. Reclamation shall be consistent with the reclamation plan approved by the planning commission or planning director as appropriate in accord with KPB 21.29.060.
  - b. [AS A CONDITION OF ISSUING THE PERMIT, THE APPLICANT SHALL SUBMIT A RECLAMATION PLAN AND POST A BOND TO COVER THE ANTICIPATED RECLAMATION COSTS IN AN AMOUNT TO BE DETERMINED BY THE PLANNING DIRECTOR. THIS BONDING REQUIREMENT SHALL NOT APPLY TO SAND, GRAVEL OR MATERIAL SITES FOR WHICH AN EXEMPTION FROM STATE BOND REQUIREMENTS FOR SMALL OPERATIONS IS APPLICABLE

PURSUANT TO AS 27.19.050.] The applicant shall operate the material site consistent with the approved reclamation plan and provide bonding pursuant to 21.29.060(B). This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.

13. *Other permits.* Permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC air and water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives. Any violation of these regulations or permits reported to or observed by borough personnel will be forwarded to the appropriate agency for enforcement.
14. [VOLUNTARY]Volunteered permit conditions. Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission for CLUPs or the planning director for counter permits. Such conditions must be consistent with the standards set forth in KPB 21.29.040(A). Planning commission approval of such conditions shall be contingent upon a finding that the conditions will be in the best interest of the borough and the surrounding property owners. [VOLUNTARY] Volunteered permit conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in [VOLUNTARY] volunteered permit conditions may be proposed [AT] by permit [RENEWAL OR AMENDMENT] modification.
15. *Signage.* For permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access, whichever is more visible. Sign dimensions shall be no more than 15" by 15" and must contain the following information: the phrase "Permitted Material Site" along with the permittee's business name and a contact phone number.

16. Appeal. No clearing of vegetation shall occur within the 50 ~~100~~-foot maximum buffer area from the permit boundary nor shall the permit be issued or operable until the deadline for the appeal, pursuant to KPB 21.20, has expired.
17. Reverse signal alarms. Reverse signal alarms, used at the material site on loaders, excavators, and other earthmoving equipment may be more technically advanced devices; such as, a multi-frequency “white noise” alarms rather than the common, single (high-pitch) tone alarms. At its discretion, the planning commission or planning director, as applicable, may waive this requirement or a portion of this requirement. The waiver of this requirement shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
19. Dust suppression. Dust suppression may ~~shall~~ be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on haul routes within property boundaries. Based on surrounding land uses the planning commission or planning director, as applicable, may waive or reduce the requirement for dust suppression on haul routes within property boundaries.
21. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8) must be approved by a licensed civil engineer or SWPPP certified individual.
22. Setback. Material site excavation areas shall be 250-feet from the property boundaries of any local option zoning district, existing public school ground, private school ground, college campus, child care facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation shall be included in the 250-foot setback. At the time of application.

#### **21.29.060. Reclamation plan.**

- A. All material site permit applications require an overall reclamation plan.
- B. The applicant may revegetate with a non-invasive plant species and reclaim all disturbed land [UPON EXHAUSTING THE MATERIAL ON-SITE, OR WITHIN A PRE-DETERMINED TIME PERIOD FOR LONG-TERM ACTIVITIES, SO AS TO LEAVE THE LAND IN A STABLE CONDITION. RECLAMATION MUST OCCUR FOR ALL EXHAUSTED AREAS OF THE SITE EXCEEDING FIVE ACRES BEFORE A FIVE-YEAR RENEWAL PERMIT IS ISSUED, UNLESS OTHERWISE REQUIRED BY THE PLANNING COMMISSION. IF THE MATERIAL SITE IS ONE ACRE OR LESS IN SIZE AND HAS BEEN GRANTED A CLUP DUE TO EXCAVATION IN THE WATER TABLE,



RECLAMATION MUST BE PERFORMED AS SPECIFIED BY THE PLANNING COMMISSION OR PLANNING DIRECTOR IN THE CONDITIONAL USE OR COUNTER PERMIT] within the time period approved with the reclamation plan so as to leave the land in a stable condition. Bonding shall be required at \$750.00 per acre for all acreage included in the current five-year reclamation plan. In the alternative, the planning director shall accept a civil engineer's estimate for determining the amount of bonding. If the applicant is bonded with the state, the borough's bonding requirement is waived. Compliance with reclamation plans shall be enforced under KPB 21.50.

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

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

[D. THE PLAN SHALL DESCRIBE THE TOTAL ACREAGE TO BE RECLAIMED EACH YEAR, A LIST OF EQUIPMENT (TYPE AND QUANTITY) TO BE USED IN RECLAMATION, AND A TIME SCHEDULE OF RECLAMATION MEASURES.]

**21.29.070. Permit extension and revocation.**

- A. Conditional land use permittees must submit a request in writing for permit extension every five years after the permit is issued. Requests for permit extension must be made at least 30 days prior to permit expiration. Counter permittees must submit any request for a 12-month extension at least 30 days prior to the expiration of the original 12-month permit period.
- B. A permit extension certificate for a CLUP may be granted by the planning director after 5 years, and after one year for a counter permit where no modification to operations or conditions are proposed.
- C. Permit extension may be denied if: (1) reclamation required by this chapter and the original permit has not been performed; (2) the permittee is otherwise in noncompliance with the original permit conditions; or (3) the permittee has had a permit violation in the last two years and has not fulfilled compliance requests.
- D. A modification application shall be processed pursuant to KP.B 21.29.030-050 with public notice given as provided by KP.B 21.25.060 when operators request modification of their permit conditions based on changes in operations set forth in the modification application.
- E. There shall be no fee for permit extensions approved by the planning director. The fee for a permit modification processed under KP.B 21.29.070(D) will be the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.
- F. Failure to submit a request for extension will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KP.B 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.
- G. Permits may be revoked pursuant to KP.B 21.50.

#### **21.29.080. Permit termination.**

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

#### **21.29.090. Permit modifications.**

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

#### **21.29.100. Recordation.**

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

#### **21.29.110. Violations.**

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

#### **21.29.120. Prior existing uses.**

- A. Material sites are not held to the standards and conditions of a CLUP if a prior existing use (PEU) determination was granted for the parcel in accordance with KPB 21.29.120(B). To qualify as a PEU, a parcel's use as a material site must have commenced or have been operated after May 21, 1986, and prior to May 21, 1996, provided that the subject use continues in the same location. In no event shall a prior existing use be expanded beyond the smaller of the lot, block, or tract lines as they existed on May 21, 1996. If a parcel is further subdivided after May 21, 1996, the pre-existing use may not be expanded to any lot, tract, or parcel where extraction had not occurred before or on February 16, 1999. If a parcel is subdivided where extraction has already occurred, the prior existing use is considered

abandoned, and a CLUP must be obtained for each parcel intended for further material site operations. The parcel owner may overcome this presumption of abandonment by showing that the subdivision is not inconsistent with material site operation. If a parcel subject to a prior existing use is conveyed, the prior existing use survives the conveyance.

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

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

- 1. The planning department may request proof of continued compliance with AS 27.19.030 – 050 on an annual basis.
- 2. Pursuant to KPB 21.29.110 the enforcement process and remedies set forth in KPB 21.50 shall govern if the proof that the statutory requirements contained in AS 27.19.030-050 is not provided to the planning department.



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

**21.50.055. Fines.**

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

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

<b>CODE CHAPTER &amp; SECTION</b>	<b>VIOLATION DESCRIPTION</b>	<b>DAILY FINE</b>
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

<b>CODE CHAPTER &amp; SECTION</b>	<b>VIOLATION DESCRIPTION</b>	<b>DAILY FINE</b>
KPB 21.44.130(C)(D)	Violation of Home Occupation Standards and Conditions/Local Option Zoning	\$300.00
KPB 21.44.130(F)	Disallowed Home Occupation/Local Option Zoning	\$300.00
KPB 21.44.135	Failure to file development notice	\$300.00
KPB 21.44.160(A)(B)	Prohibited use	\$300.00
KPB 21.44.160(C)	Violation of Development Standards/Single Family Zoning/Local Option Zoning	\$300.00
KPB 21.44.165(A)(B)	Prohibited use	\$300.00
KPB 21.44.165(C)	Violation of Development Standards/Small Lot Residential Zoning/Local Option Zoning	\$300.00
KPB 21.44.170(A)(B)	Prohibited use	\$300.00
KPB 21.44.170(C)	Violation of Development Standards/Rural Residential District/Local Option Zoning	\$300.00
KPB 21.44.175(B)(C)	Prohibited Use	\$300.00
KPB 21.44.175(D)	Violation of Development Standards/Residential Waterfront	\$300.00
KPB 21.44.180(A)(B)	Prohibited Use	\$300.00
KPB 21.44.180(C)	Violation of Development Standards/Multi-Family Residential District/Local Option Zoning	\$300.00
KPB 21.44.190(A)(B)	Prohibited Use	\$300.00
KPB 21.44.190(C)	Violation of Development Standards/Industrial District/Local Option Zoning	\$300.00

CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
KPB 21.46.030(b)	Failure to maintain bear-resistant garbage cans/Local option zone/Birch and Grove Ridge subdivisions Rural Residential District	\$300.00
KPB 21.50.100(F)	Removal of posted enforcement notice	\$300.00
KPB 21.50.100(G)	Violation of enforcement notice	\$1,000.00
KPB 21.50.130(I)	Violation of an enforcement order	\$1,000.00

**SECTION 4.** That this ordinance shall become effective upon its enactment.

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

\_\_\_\_\_  
Brent Johnson, Assembly President

ATTEST:

\_\_\_\_\_  
Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:



# Kenai Peninsula Borough

## Planning Department

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### MEMORANDUM

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

**THRU:** Charlie Pierce, Mayor *CP*

**FROM:** Melanie Aeschliman, Planning Director *MA*

**DATE:** November 23, 2021

**SUBJECT:** Ordinance 2021-41 Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures (Mayor)

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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

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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

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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

## Legal Department

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### MEMORANDUM

**TO:** Brent Johnson, Assembly president  
Members, Kenai Peninsula Borough Assembly

**FROM:** A. Walker Steinhage, Deputy Borough Attorney *AW*  
Sean Kelley, Borough Attorney *SK*

**CC:** Charlie Pierce, Mayor  
Melanie Aeschliman, Planning Director

**DATE:** January 14, 2022

**RE:** Questions for the Assembly to consider regarding Ordinance 2021-41

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Appeals from Planning Commission decisions approving or denying material site conditional land use permit (CLUP) applications, and remands to the Commission which sometimes follow such appeals, cost the Borough time, resources, and money.

In response to inquiries from KPB Assembly members, the purpose of this memo is to present some questions for the Assembly to consider as it reviews Ordinance 2021-41. If the Assembly is able to resolve some or all of these questions, the costs associated with appeals from the Commission's CLUP decisions may be alleviated. The questions are as follows:

**1) Should the Planning Commission continue to have the discretion to deny a CLUP application?**

Current Code: The Planning Commission is vested with discretion to deny a permit application. Under KPB 21.25.050(B) the Planning Commission shall either "approve, modify or disapprove the permit application."

O2021-41 as proposed: The new section KPB 21.29.055 provides that the Planning Commission shall approve permit applications that meet all the mandatory conditions under KPB 21.29.050 and shall disapprove a permit application that does not meet all the conditions under KPB 21.29.050.

**2) If the Planning Commission has the discretion to deny a CLUP application, what is the scope of that discretion?**

- a. Should the Planning Commission have the discretion to deny a CLUP application which otherwise meets or exceeds all the conditions under KPB 21.29.050 if the Commission finds that the application does not meet the standards established under KPB 21.29.040?
- b. Should the Planning Commission have the discretion to deny a CLUP application which otherwise meets or exceeds all the conditions under KPB 21.29.050 **and** even if the Commission finds that the application meets the standards established under KPB 21.29.040?

**3) If the Assembly decides the Planning Commission should have the discretion to deny a CLUP application, how can the applicable KPB Code (specifically KPB 21.29.040 and 21.29.050) be improved to best equip the Commission to make findings of fact, based on substantial evidence in the record, to withstand scrutiny on appeal and thereby reduce remands after appellate review?**

Several tables are appended to this memo comparing current KPB Code language and the language proposed in Ordinance 02021-41<sup>1</sup> with the language drawn from the analogous codes from other second-class boroughs; namely, the Matanuska-Susitna Borough (Appendix A), the Ketchikan Gateway Borough (Appendix B), the Kodiak Island Borough (Appendix C), and the Fairbanks North Star Borough (Appendix D).

**4) If the Assembly decides to eliminate the Planning Commission's discretion to deny CLUP applications, then what is the purpose of the Planning Commission's review of CLUP applications?**

- a. If the Planning Commission's discretion is eliminated, then should review of CLUP applications simply become an administrative process?
- b. What effect will eliminating the Planning Commission's discretion to deny CLUP applications have on the public's ability to be heard?

Enclosures:

- (1) Appendix A
- (2) Appendix B
- (3) Appendix C
- (4) Appendix D
- (5) Sectional Analysis provided when O2019-30 was originally considered

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<sup>1</sup> New Text Underlined; [DELETED TEXT BRACKETED]



## APPENDIX A

### KPB/MATANUSKA-SUSITNA BOROUGH

<b>KPB 21.29.040. Standards for sand, gravel or material sites. (As proposed in O2021-41)</b>	<b>MSB 17.30.060 General Standards for Approval</b>
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:	(A) In granting an administrative permit or a conditional use permit, the director or commission must make the following findings:
1. Protects against the lowering of water sources serving other properties;	(1) that the use is not inconsistent with the applicable comprehensive plan;
2. Protects against physical damage to [OTHER] <u>adjacent</u> properties;	(2) that the use will preserve the value, spirit, character, and integrity of the surrounding area;
3. [MINIMIZES] <u>Protects against</u> off-site movement of dust;	(3) that the applicant has met all other requirements of this chapter pertaining to the use in question;
4. [MINIMIZES] <u>Protects against</u> noise disturbance to other properties;	(4) that granting the permit will not be harmful to the public health, safety and general welfare; and
5. [MINIMIZES] <u>Protects against</u> visual impacts of the material site; [AND]	(5) that the sufficient setbacks, lot area, buffers or other safeguards are being provided to meet the conditions listed in MSB <a href="#">17.30.050</a> (B).
6. Provides for alternate post-mining land uses[.];	
<u>7. Protects Receiving Waters against adverse effects to fish and wildlife habitat;</u>	
<u>8. Protects against traffic impacts; and</u>	
<u>9. Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.</u>	

**APPENDIX B**  
**KPB/KETCHIKAN GATEWAY BOROUGH**

<b>KPB 21.29.040. Standards for sand, gravel or material sites. (As proposed in O2021-41)</b>	<b>KGB Code 18.55.050</b>
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:	(a) Purpose. A conditional use permit, issued hereunder, is a device which gives flexibility to the zoning ordinance in a uniform and controlled manner. It permits inclusion, in zones where it is permitted by the zoning ordinance (of which this chapter is part), of uses which are basically desirable to the community, but where the nature of the use will not permit its location at every location in the said zones without restrictions and conditions designed to fit the special problems which the use presents. A conditional use permit allows a landowner to put his property to a use which the zoning ordinance expressly permits: It does not allow a landowner to use his property in a manner forbidden by the zoning ordinance.
1. Protects against the lowering of water sources serving other properties;	(b) Standards. As express conditions precedent to the granting of any conditional use permit, a majority of the planning commission members (not merely a majority of the members present), after a public hearing, must find in writing that:
2. Protects against physical damage to [OTHER] <u>adjacent</u> properties;	(1) The requested conditional use is reasonably necessary for the public health, safety, and general welfare; and
3. [MINIMIZES] <u>Protects against</u> off-site movement of dust;	(2) The requested conditional use will not permanently or substantially injure the lawful use of neighboring uses; and
4. [MINIMIZES] <u>Protects against</u> noise disturbance to other properties;	(3) The requested conditional use will generally be in harmony with the comprehensive plan; and
5. [MINIMIZES] <u>Protects against</u> visual impacts of the material site; [AND]	(4) The requested conditional use is a conditional use expressly permitted by the zoning ordinance in the zone in which the conditional use permit is requested.
6. Provides for alternate post-mining land uses[.];	
7. <u>Protects Receiving Waters against adverse effects to fish and wildlife habitat;</u>	
8. <u>Protects against traffic impacts; and</u>	
9. <u>Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.</u>	

## APPENDIX C

### KPB/KODIAK ISLAND BOROUGH

<b>KPB 21.29.040. Standards for sand, gravel or material sites. (As proposed in O2021-41)</b>	<b>KIB 17.200.050 General Standards for Approval<sup>2</sup></b>
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:	A. <i>Approval.</i> If it is the finding of the commission, after consideration of staff's report and receipt of testimony at the public hearing, that the use proposed in the application, or under appropriate conditions or restrictions, meets all of the following, the conditional use permit shall be granted:
1. Protects against the lowering of water sources serving other properties;	1. That the conditional use will preserve the value, spirit, character and integrity of the surrounding area;
2. Protects against physical damage to [OTHER] <u>adjacent</u> properties;	2. That the conditional use fulfills all other requirements of this chapter pertaining to the conditional use in question;
3. [MINIMIZES] <u>Protects against</u> off-site movement of dust;	3. That granting the conditional use permit will not be harmful to the public health, safety, convenience and comfort;
4. [MINIMIZES] <u>Protects against</u> noise disturbance to other properties;	4. That the sufficient setbacks, lot area, buffers or other safeguards are being provided to meet the conditions listed in subsections <u>(A)(1)</u> through <u>(3)</u> of this section;
5. [MINIMIZES] <u>Protects against</u> visual impacts of the material site; [AND]	5. If the permit is for a public use or structure, the commission must find that the proposed use or structure is located in a manner which will maximize public benefits.
6. Provides for alternate post-mining land uses[.];	
<u>7. Protects Receiving Waters against adverse effects to fish and wildlife habitat;</u>	
<u>8. Protects against traffic impacts; and</u>	
<u>9. Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.</u>	

<sup>2</sup> Interestingly, KIB Code 17.200.050 contains the following subsection: "B. Denial. If the commission finds, after consideration of staff's report and receipt of testimony at the public hearing, that it cannot make all of the required findings in subsection A of this section it shall deny the conditional use permit."

**APPENDIX D**  
**KPB/FAIRBANKS NORTH STAR BOROUGH**

<b>KPB 21.29.040. Standards for sand, gravel or material sites. (As proposed in O2021-41)</b>	<b>FNSB 18.104.050 Procedures for conditional uses.</b>
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:	C. Hearing and Decision by the Planning Commission. The Planning Commission shall review, hear and decide whether or not to approve a request for a conditional use. The Planning Commission shall also consider and adopt findings in each of the following:
1. Protects against the lowering of water sources serving other properties;	1. Whether or not the proposed conditional use conforms to the intent and purpose of this title and of other ordinances and state statutes;
2. Protects against physical damage to [OTHER] <u>adjacent</u> properties;	2. Whether or not there are adequate existing sewage capacities, transportation facilities, energy and water supplies, and other public services to serve the proposed conditional use;
3. [MINIMIZES] <u>Protects against</u> off-site movement of dust;	3. Whether or not the proposed conditional use will protect the public health, safety and welfare.
4. [MINIMIZES] <u>Protects against</u> noise disturbance to other properties;	
5. [MINIMIZES] <u>Protects against</u> visual impacts of the material site; [AND]	
6. Provides for alternate post-mining land uses[.];	
7. <u>Protects Receiving Waters against adverse effects to fish and wildlife habitat;</u>	
8. <u>Protects against traffic impacts; and</u>	
9. <u>Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.</u>	

# Kenai Peninsula Borough

## Legal Department

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### MEMORANDUM

**TO:** Kelly Cooper, Assembly President  
Kenai Peninsula Borough Assembly Members

**THRU:** Charlie Pierce, Mayor

**FROM:** Sean Kelley, Deputy Borough Attorney  
Max Best, Planning Director

**DATE:** October 24, 2019

**RE:** Material Site Sectional Analysis

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Please find following a sectional analysis of the amendments to the material site ordinance proposed by the Kenai Peninsula Borough Planning Commission.

1. In KPB 21.25.030. - Definitions.

A definition of "assisted living home" is added because a setback is proposed to be required from those facilities. A definition for "development plan" is added to support a new exemption from the material site ordinance that allows extraction for on-site development. A definition of "disturbed" is added and the definition of "exhausted" is eliminated. This change is made to avoid the situation where reclamation is delayed or avoided by asserting a material site is not yet exhausted, instead reclamation is in reference to disturbed areas. The term "disturbed" is also consistent with the state of Alaska reclamation language. A definition of "haul route" is added to support the proposed requirement for off-site dust suppression. A definition of "permit area" is added—this clarifies that a portion of a parcel, as opposed to an entire parcel, may be subject to a material site permit and defines what attributes will be considered part of the permitted area. A definition of "vicinity" is added to include all existing uses within the ½-mile notification area. This defines the area that should be considered when waiving or lessening the conditions on the permit.



Material Site Sectional Analysis  
October 24, 2019  
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2. KPB 21.29.010. -Material extraction exempt from obtaining a permit.

Subsection (D) adds a new exemption for parcels with a development plan on file with the planning department. This provision exempts from the ordinance short-term extraction that is incidental to site development for a building project.

3. KPB 21.29.030. -Application procedure.

Surface water protection measures are moved from the site plan section of the application to Paragraph (A)(8) because a surveyor is required to prepare the site plan, but an engineer is necessary to design the surface water protection measures.

Paragraph (A)(9)(f) is clarified to require more than 1 test hole placed anywhere on the parcel as that requirement allowed for taking the test hole at the highest elevation on a parcel which may not be the most accurate measurement of depth to groundwater. The proposed ordinance requires a test hole for every ten acres of excavated area and the test holes must be four feet below the proposed depth of excavation. This is consistent with the proposed increased requirement that excavation remain four feet above ground water which is consistent with Alaska DEC User's Manual Best Management Practices for Gravel/Rock Aggregate Extraction Projects – Protecting Surface Water & Groundwater Quality in Alaska (Sept. 2012) (hereinafter "Best Management Practices") and is also consistent with the current requirement for counter permits.

4. KPB 21.29.040. -Standards for sand, gravel or material sites.

Three new standards are added that either existing or proposed conditions will meet. Receiving waters are protected for fish and wildlife. This standard is consistent with mandatory condition #6 which requires a setback from waterbodies for material site extraction. Standard #8 is added to protect against traffic impacts which is consistent with the conditions regarding damage to borough roads, proposed ingress and egress, noise, and dust. Standard #9 is added because planning decisions should be consistent with the comprehensive plan.

## Material Site Sectional Analysis

October 24, 2019

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5. KPB 21.20.050(A)(1) is changed to require staking the permit boundaries, rather than the parcel boundaries prior to issuance of the permit. (Staking the boundaries of the parcel is currently required at time of application.)
  6. KPB 21.20.050(A)(2) is changed to require a maximum buffer of 100 feet unless the operator can demonstrate to the planning commission that there are good reasons for a reduced buffer. A fence, vegetation, or berm or a combination thereof may be used as a buffer. Unlike the current code, the maximum vegetative buffer is not 50 feet but could be up to the entire 100 foot of buffer required. Another new requirement is that when a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required. This is to avoid the practice of making application and then destroying the vegetation that could have served as a buffer. Finally, there is a new condition allowing the buffer to be reduced with an approved alternate buffer plan which may consist of a berm, vegetation, fence or other type of buffer solution. For example, a moveable wall that would screen noise and the visual impact of the material site could be allowed.
  7. Language is revised in KPB 21.29.050(A)(3) for consistency by using the term "vicinity" rather than the term "adjacent".
  8. In KPB 21.20.050(A)(6) the buffer from waterbodies is increased to 200 feet. This condition is consistent with the Alaska DEC User Manual Best Management Practices and the newly proposed standard regarding the protection of "receiving waters".
  9. Paragraph KPB 21.29.050(A)(11) is revised to prohibit processing from 7 p.m. to 6 a.m. The current prohibition is 10 p.m. to 6 a.m. for rock crushing. Paragraph (b) is added to allow the planning commission to grant exceptions to the restrictions on processing hours based on a variety of factors including surrounding land uses, topography, screening the material site from adjacent properties and conditions placed on the permit by the planning commission to mitigate the noise, dust, and visual impacts caused by the material site.
  10. Paragraph KPB 21.29.050(A)(12)(b) clarifies the requirement for a reclamation plan and bonding for material sites that are not exempt from the state bonding requirements. This condition is further detailed in KPB 21.29.060(B) addressing reclamation.

## Material Site Sectional Analysis

October 24, 2019

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11. Air quality is added to the list of other regulations in condition KPB 21.29.050(A)(13) that a material site is responsible for following.
  12. Language is revised in KPB 21.29.050(A)(14) for consistency by using the term "volunteered" rather than the term "voluntary".
  13. In KPB 21.29.050(A)(16), a new condition clarifies that a material site permit shall not be issued until the 15-day appeal period has passed to avoid someone operating prior to an appeal being filed only to be required to cease because of the stay required by KPB 21.20.260.
  14. A new condition is added in KPB 21.29.050(A)(17), Sound Level. The condition requires that sounds levels from material site activities not exceed 75 dB(A), measured at or within the property boundary of the material site. Some exceptions are made to increase that limit for sound of a short duration between 7 a.m. and 7 p.m. The planning commission may reduce the sound level requirements in consideration of the existing land uses in the vicinity. This sound level requirement has a sunset clause of 365 days after adoption unless extended by the assembly in order to gather information on noise levels and ensure that this new requirement is workable for site operations. This condition meets the standard regarding reduction of noise impacts generated by a material site.
  15. KPB 21.29.050(A)(18) is a new requirement that white noise devices be used instead of high-pitched tone alarms. This requirement may be waived based on existing land uses in the vicinity of the material site. This condition meets the standard regarding reduction of noise impacts generated by a material site.
  16. KPB 21.29.050(A)(19) is a new condition allowing the planning commission or planning director as appropriate to determine the points of ingress and egress of a material site as concerns regarding the direction of haul route traffic are frequently raised. Driveway authorizations for access to public roads must be received prior to permit issuance. This condition meets the standards regarding traffic, noise, and dust.
  17. KPB 21.29.050(A)(20) is a new condition requiring dust suppression on haul routes. The condition can be relaxed based on surrounding land uses. This condition meets the standard regarding reduction of dust generated by material sites.

## Material Site Sectional Analysis

October 24, 2019

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18. KPB 21.29.050(A)(21) provides that if surface water protection measures are to be provided as defined in KPB 21.29.030(A)(8), they must be approved by a licensed civil engineer.
  19. KPB 21.29.050(A)(22) is a new condition requiring material sites to maintain one monitoring tube per ten acres of excavated area four feet below the proposed excavation. This condition is consistent with the new requirement that excavation remain four feet above groundwater. This condition addresses the standard of protection of surrounding water sources.
  20. KPB 21.29.050(A)(23) is a new requirement for a setback from local option zoning districts, schools, child care facilities, senior centers, assisted living homes and licensed health care facilities.
  21. KPB 21.20.055, Decision, is added which clarifies the planning commission's authority to approve or disapprove a permit application and authority to modify permit conditions.
  22. KPB 21.29.060 is amended to clarify that reclamation plans last for five years consistent with the five-year renewal requirement for material site permits. Bonding is required at \$2000.00 per acre for all acreage included in the five-year reclamation plan, or the planning director may accept a civil engineer's estimate for determining the amount of the bond. If the applicant is bonded with the state, the applicant need not be bonded with the borough.
  23. KPB 21.29.120, Prior Existing Uses, is amended to delete the provision regarding terminating abandoned material site permits since it was only applicable to permits that did not operate between May 21, 1996 and May 21, 2011. New language is added requiring PEUs to provide proof of compliance with the state reclamation, bonding, and letter of intent requirements. Failure to file this documentation may result in an enforcement action.
  24. KPB 21.50.055, Fines, is amended to include a \$300.00 fine for failure to provide a reclamation plan and proof of bonding or letter of intent pursuant to KPB 21.29.120.

## **Broyles, Randi**

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**From:** Hans Bilben <catchalaska@alaska.net>  
**Sent:** Tuesday, February 8, 2022 6:12 PM  
**To:** Blankenship, Johni  
**Subject:** <EXTERNAL-SENDER>Info for 2/15/22 Committee of the Whole (Material Site Ordinance)

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

Date:  
2/8/2022

To:  
KPB Assembly Members

Subject:  
KPB 21.29.050 (A)(2) Buffer Area/Zone

Assembly Members,

During the January 18th Assembly meeting Gina DeBardelaben of McLane Consulting spoke concerning the proposed material site ordinance revision. She followed up with a letter to the Assembly dated January 19th. While most of Gina's proposals have merit and should be considered, her proposal to allow an applicant to extract material from under and within the Buffer Zone is seriously flawed.

The Buffer Zone is just what the name implies, a buffer to protect neighboring property owners from noise, visual, and to some degree dust impacts. The buffer zone is designed in accordance with existing uses of neighboring properties, and may consist of fifty feet of undisturbed natural vegetation, a six foot earthen berm with a 2/1 slope, a six foot fence, or a combination of the three. In cases where there are no neighboring properties that will have negative impacts, the buffer zone can be minimal or nonexistent. When existing uses dictate the need for protections the Buffer Zone is designed accordingly. The reason for the entire CLUP ordinance is stated in **KPB 21.25.020 Purpose**. It says "...impose minimum standards for certain land uses which may be damaging to the public health, safety, and welfare..." Those minimum standards are spelled out in **KPB 21.29.040** and need to be adhered to during all aspects of the proposed use.

Gina's final statement that allowing excavation in the Buffer Zone will reduce need for additional material sites has no merit, as the need for additional sites will be totally demand driven. Another oversight in her proposal is just where is all of the material going to come from to replace and rebuild the Buffer Zone after excavating twenty feet or more in depth.

Allowing excavation in the Buffer Zone deprives borough residents of the protections spelled out in the ordinance, contradicts the stated Purpose of the entire ordinance, and should not be allowed under any circumstances.

Thank you for your service to the people of the Kenai Peninsula,





## Broyles, Randi

**From:** Hans Bilben <catchalaska@alaska.net>  
**Sent:** Wednesday, February 9, 2022 10:52 AM  
**To:** Blankenship, Johni  
**Subject:** <EXTERNAL-SENDER> Supporting Documents for proposed material site amendments.

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

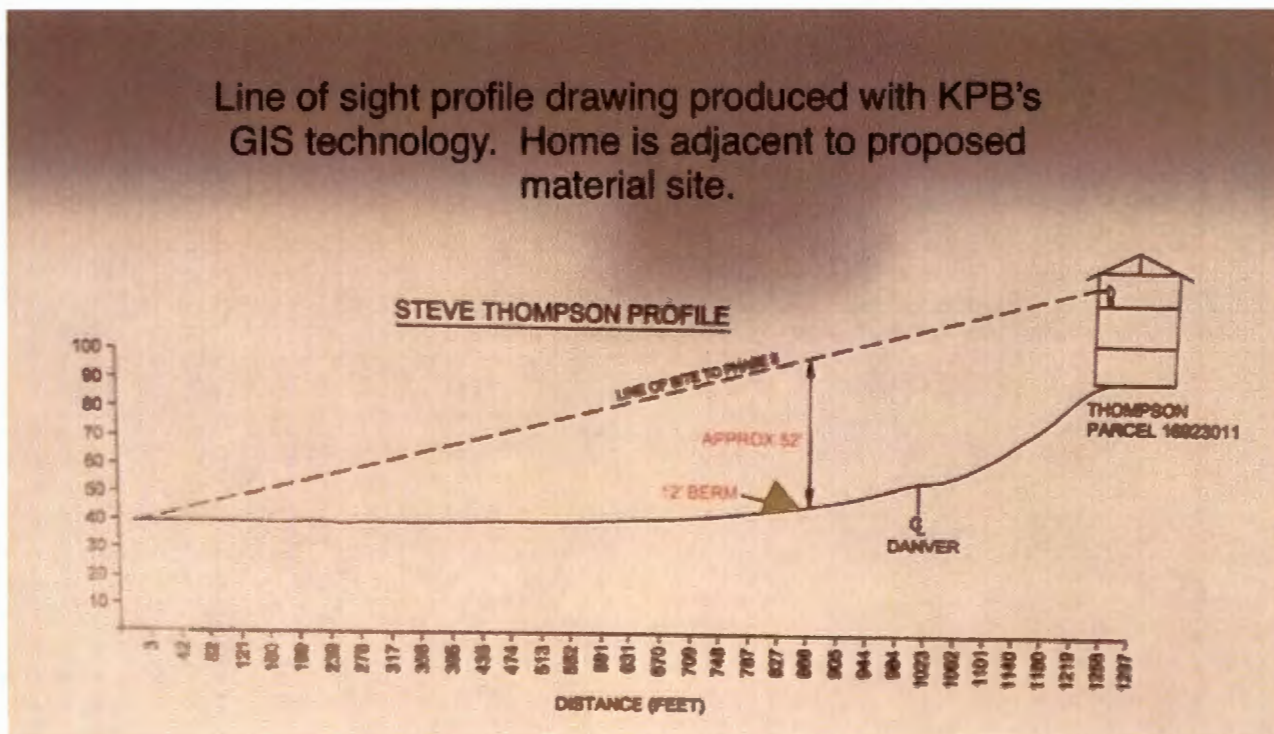
Hi Johni,

I should have sent these with the proposed amendments yesterday, but OOPS! If you could include these supporting documents with my proposed amendments to the material site ordinance for the Committee of the Whole session on 2/15/2022 that would be great!!

Thanks,

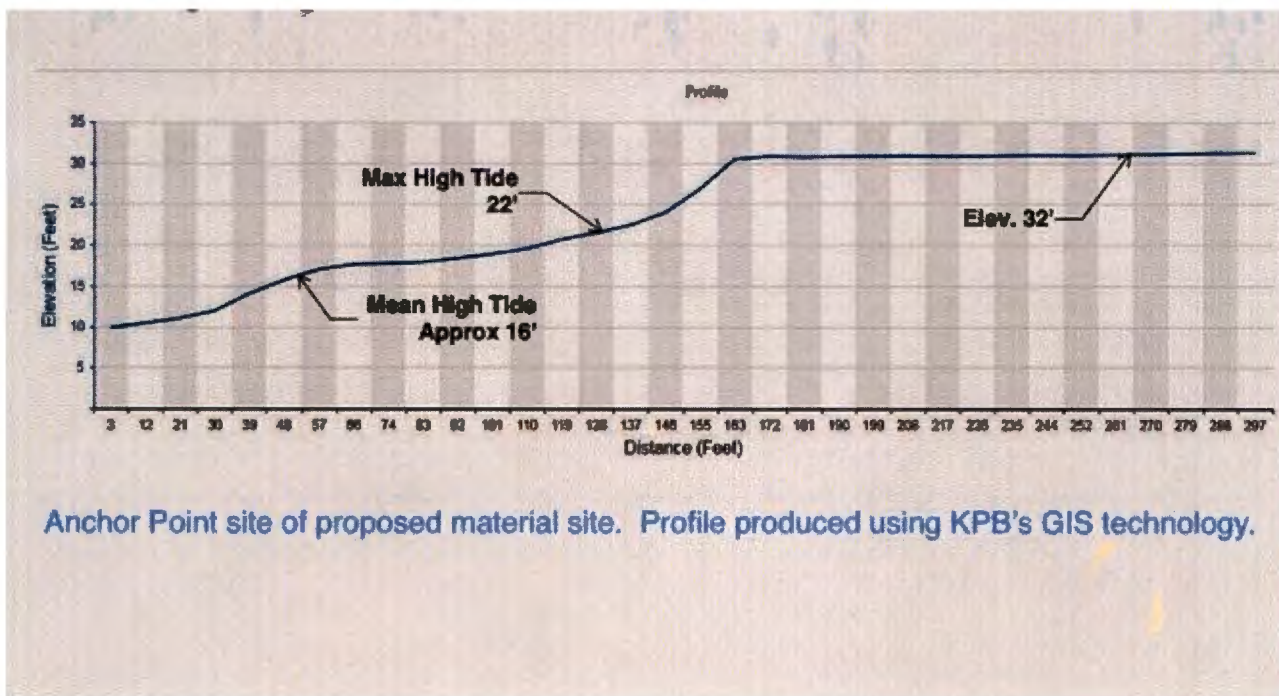
Hans Bilben

Document in support of proposed amendment 21.29.050 (A)(2)(b) Buffer Area.









8:37 AM Wed Feb 9

sms-tsunami-warning.com

100%

rebuilding and road reconstruction) are critical.



Image: Tsunami environmental impact

Combined with the issue of waste is that of hazardous materials and toxic substances that can be inadvertently mixed up with ordinary debris. These include asbestos, oil fuel, and other industrial raw materials and chemicals. Rapid clean-up of affected areas can result in inappropriate disposal methods, including air burning and open dumping, leading to secondary impacts on the environment.

Contamination of soil and water is the second key environmental impact of a tsunami. Salination of water bodies such as rivers, wells, inland lakes, and groundwater aquifers can occur in most cases. This also affects the soil fertility of agricultural lands due to salination and debris contamination, which will affect yields in the medium and long term. Sewage, septic tanks and toilets are damaged contaminating the water supply.

Last but not least, there may be radiation resulting from damage to nuclear plants, as it happened in Japan in March 2011. Since radiation exists for a long time, it has the capacity to inflict damage upon anything exposed to it. Radiation is most dangerous to animals and humans causing destruction as molecules lose their electrons. The damage caused by radiation to the DNA structure determines birth defects, cancers even death.

## Cost

Massive costs hit communities and nations when a tsunami happens. Victims and survivors of the tsunami need immediate help from rescue teams.

**Broyles, Randi**

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**From:** Hans Bilben <catchalaska@alaska.net>  
**Sent:** Tuesday, February 8, 2022 6:00 PM  
**To:** Blankenship, Johni  
**Cc:** Aeschliman, Melanie; Kelley, Sean; Chesley, Lane  
**Subject:** <EXTERNAL-SENDER>Material Site Ordinance Amendments  
**Attachments:** Standard #1 Amendment.pages; CLUP Category Amendment.pages; Buffer Area amendments.pages; Waterbody Amendments.pages

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

Hi Johni,

Please provide these proposed amendments to the Committee of the Whole dealing with the Material Site Ordinance on 2/15/2022. If there is any trouble opening these because of format, let me know and I'll adjust accordingly!

Thanks,

Hans Bilben



**1. 21.29.050 (A)(2) Buffer Area (3 amendments)**

Replace (a) with:

- a. A buffer area shall be established between the area of excavation and the parcel boundaries. The buffer area for a Class 1 (processing) CLUP shall consist of the following: A minimum fifty feet of undisturbed natural vegetation and a minimum twelve-foot earthen berm with a minimum 2/1 slope. The buffer area for a Class 2 (non-processing) CLUP shall consist of one or any combination of the following: Fifty feet of undisturbed natural vegetation, a minimum six-foot fence, a minimum six-foot earthen berm with a minimum 2/1 slope.
- 

- 2. Add a new paragraph to 21.29.050 (A)(2) Buffer Area—maybe call it (b) and move remainder of letters down one?**

- b. KPB's Geographic Information System (GIS) technology will be utilized in the design of the buffer area when differing elevations exist between the proposed site and neighboring property owners. Using this technology, line of sight profile drawings from the uppermost inhabitable level of existing properties located within one thousand feet of the proposed parcel boundary shall be utilized in the determination of sufficiency of the buffer area.
-

3. In the revised proposal under Buffer Area (c) the word “**not**” is omitted from what the wording was in the current (**see 21.29.050 (A)(2) in original**) ordinance. This is a huge takeaway from borough residents and I believe that when it was discussed at the material site group they decided to keep the word “**not**”. As worded, the proposed revision would include any easements between a property owner and a gravel pit as part of the Buffer Area.

**21.29.050 (A)(2)(c)** Should be amended to read:

c. Where an easement exists, a buffer shall **not** overlap the easement, unless otherwise conditioned by the planning commission or planning director.

1. Three Amendments to create two Categories of CLUPs.

#### **21.29.020 (B) Conditional Land Use Permit.**

B. 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.~~] **CLUPs will be categorized at the time of application as: Class 1 (Processing), or Class 2 (Non-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 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 21.29 are controlling.

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#### **2. 21.29.050 (A) Permit Conditions.**

A. The following mandatory conditions apply to counter permits, [~~CLUPs~~] **Class 1 CLUPs, and Class 2 CLUPs** issued for sand, gravel, or material sites:

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#### **3. 21.29.050 (A)(3) Permit Conditions**

3. Processing. In the case of a [~~CLUP~~] **Class 1 (processing) CLUP**, any equipment which conditions or processes material must be operated at least [~~300~~] **500** feet from the parcel boundaries. At its discretion, the planning commission may waive the [~~300~~] **500** foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of adjacent property at the time.

## **Amendment to Standards**

### **21.29.040 (A)(1) Standards for sand, gravel, or material sites.**

1. Protects against the lowering and/or contamination of water sources serving other properties;

Add new paragraphs (c) and (d) to this section:

**21.29.050 (A)(6) Waterbodies.**

c. No material site extraction shall be allowed within the boundaries of a tsunami inundation area. These areas are mapped by the Alaska DNR, in partnership with the Alaska Earthquake Center and the Alaska Division of Homeland Security and Emergency Management.

d. When material sites are proposed near waterways and estuaries which support salmon rearing habitat existing ground water flow information shall be utilized to determine if standards will be met.



Mr. Brent Johnson, President,  
Kenai Peninsula Borough Assembly  
and Assembly members

Dear Mr. Johnson and Assembly Members,

Reading about the wish of the Assembly to review the Gravel Pit Ordinance, reminded me of my years if involvement with this.

Drew Scalzi wrote the first one, which the Gravel folks hated, they did not feel it was necessary to control their businesses, and deeply resented the efforts. I got involved thanks to Ann Byes of Anchor Point, who lives near a prime example of gravel pit abuse, where a house stands totally isolated by the deep extractions all around it. She and I were concerned that future extraction would not affect residents nearby, and had asked for at least a 300 ft. distance from a well and the proposed gravel pit.. Before it was voted on, that was changed to 100 ft. At that time Committee meetings were behind closed doors and discussion at the meetings very limited. (During my tenure we changed that.)

So, during my tenure we took another look at it and rewrote it, again to the utter chagrin of the businesses. At that time, as you are now, we came up against a subdivision that faces a busy gravel pit just outside the quiet subdivision, and those folks are not happy about it. They can get local option zoning within the subdivision, but no protection outside the subdivision.

It is time for the Assembly to consider zoning certain areas as residential, that would not allow gravel pits, or commercial businesses. It is the only way to ensure established subdivisions will be protected from commercial disturbances.

In the past there has been a huge outcry against zoning, but I think the time has come. I see the planning committee listening to impassioned cries against proposed gravel pits, and I can empathize. It is impossible to create an ordinance that will protect them.

And somehow we have to recognize there is a need for gravel in order to build anything, roads, homes, etc. That is a vital business on the Peninsula.

I do not envy you what lies ahead. I wish you the best in your endeavors.

Sincerely,

Milli Martin  
P.O. Box 2652  
Homer, Alaska 99603

## Broyles, Randi

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**From:** Blankenship, Johni  
**Sent:** Wednesday, January 26, 2022 11:54 AM  
**To:** Broyles, Randi  
**Subject:** FW: <EXTERNAL-SENDER>Fwd: KPB Ordinance 2021 - 41

**From:** Larry Smith <dlconst.smith@gmail.com>  
**Sent:** Wednesday, January 26, 2022 11:52 AM  
**To:** Blankenship, Johni <JBlankenship@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Fwd: KPB Ordinance 2021 - 41

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

Please include this in the Assembly packet for the next meeting wherein KPB Ordinance 2021-41 is considered. Thank you.

----- Forwarded message -----

From: **Larry Smith** <[dlconst.smith@gmail.com](mailto:dlconst.smith@gmail.com)>  
Date: Wed, Jan 26, 2022 at 11:47 AM  
Subject: KPB Ordinance 2021 - 41  
To: <[bjohnson@kpb.us](mailto:bjohnson@kpb.us)>, <[bhibbert@kpb.us](mailto:bhibbert@kpb.us)>, <[rderkevorkian@kpb.us](mailto:rderkevorkian@kpb.us)>, <[bjorkman@kpb.us](mailto:bjorkman@kpb.us)>, <[tysoncox@kpb.us](mailto:tysoncox@kpb.us)>, <[belam@kpb.us](mailto:belam@kpb.us)>, <[cecklund@kpb.us](mailto:cecklund@kpb.us)>, <[lchesley@kpb.us](mailto:lchesley@kpb.us)>, <[mtupper@kpb.us](mailto:mtupper@kpb.us)>, Pierce, Charlie <[cpierce@kpb.us](mailto:cpierce@kpb.us)>, Kpac Association <[kpacassociation@yahoo.com](mailto:kpacassociation@yahoo.com)>

Ladies and Gentlemen,

I attended the KPB Assembly meeting on January 18, 2022 and testified against this Ordinance. I do not know how many emails you received in support of this Ordinance but seem to recall that everyone (at least a majority) who testified in person that evening testified against the Ordinance. And yet at the conclusion of the public testimony the Assembly introduced the Ordinance and offered a number of amendments; some of which were adopted and others rejected.

Therefore I wonder who it is that you are representing? Certainly not the public or your constituents since in my view they requested that you vote down the Ordinance. Are you representing the KPB Planning Commission or the KPB Administration? Why are you moving forward with this Ordinance?

--

Larry Smith

President  
D & L Construction Co., Inc.  
(907) 262-6160  
(907) 262-6163 Fax  
(907) 398-4284 Cell

--

Larry Smith

President

D & L Construction Co., Inc.

(907) 262-6160

(907) 262-6163 Fax

(907) 398-4284 Cell

## Dibble Creek Rock Ltd.

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January 20, 2022

Kenai Peninsula Borough  
Borough Assembly  
144 N. Binkley Street  
Soldotna, AK 99669

RE: Review of Ordinance 2021-41

Dibble Creek Rock Ltd. (DCR) does not support the current proposed changes regarding KPB Ordinance 2021-41. We simply feel that the Borough needs to put more research into logical, effective changes to the ordinance that make sense. Not only economic sense, but changes that are geared towards efficiency, usefulness, and overall production for the operators and to stop acting upon the skewed emotions of landowners.

The proposed changes to the ordinance currently read very distorted. It is very misguided and will ultimately result in more complaints to the Borough, which is why the code was written in the first place, to reduce complaints. Wording within the code should be heavily modified, eliminating wording or phrases that have nothing to do with working within a material site or phrases that relay unattainable results. Wording such as "other uses, protects against, minimizes, vicinity" are just a few examples that are vague and subject to interpretation. Possibly more appropriate wording could be considered. It also appears there is potential for unnecessary overlap in regulation between the Borough and other State and Federal agencies.

As one of the larger gravel processors on the Kenai Peninsula, we are highly disappointed that no one from the KPB Material Site Work Group reached out to Dibble Creek Rock Ltd. in the past two years for our input or suggestions for modifications to the ordinance. What operators did they reach out to for input?

The growing need for **quality**, processed gravel throughout the Kenai Peninsula will become increasingly difficult to attain. Product specifications need to be met to ensure that aggregates of superior quality are produced for not only maintaining roads, but for home and building foundations on less than favorable land conditions. Quality aggregates are a big part of the ready-mix concrete and asphalt manufacturing process. Products that prove to be crucial components in the road building and general construction industry. Challenging demands put forth in the new ordinance would drive the cost of doing business through the roof. In turn, dramatically increasing the price of materials to the end user (State, Feds, Borough, Homeowners).

We do hope that our thoughts, along with others on the Kenai Peninsula are genuinely taken into consideration.

Respectfully,

Cap Shafer  
President

---

Quality Washed Rock Products • Ready Mix Concrete

34481 North Fork Road • Anchor Point, AK 99556 • 907.235.7126 - Phone • 907.235.0682 - Fax



To the Kenai Peninsula Borough Assembly,

The Kenai Peninsula Aggregate and Contractors Association has received over a hundred phone calls from our members and the public in regard to the actions of the assembly at the meeting conducted on the 18<sup>th</sup> of January, 2022. All these calls asked us two things. What is going on?!? Why did the assembly go against the will of the people? Specifically, callers are concerned about the Assembly's decision to do so.

Several of our members have asked the Association to write a letter as a plea of communication and education, asking members of the assembly to contact them before any further amendments are considered. Most of our members and the public are concerned about what damage to the industry, economy, property rights, and equal protection any further amendments will do without industry input.

Many calls received have a consensus that further amendments without education of the industry will result in negative impacts. These impacts have varied from the closure of existing material sites, closure to the public, doubling or tripling of material costs, or significant increase in the cost of material. This will unnecessarily impact the economy of the Kenai peninsula and quite possibly affect the safety of the residents in many ways. Many worried that if the cost of sand increases dramatically, roads will receive less maintenance, causing potentially fatal accidents. That is just the most obvious concern, as we are in the season of slick roads and the residents have already experienced cutbacks in road maintenance during the Walker administration at the state level. We can see how voters responded when Government made decisions that affected basic needs and took advice from special interests. One might note the current situation and reaction of the trucking industry in Canada, due to adverse regulation.

As a plea for communication and education, these members of our association below have asked their names and phone numbers be included. Thank you for your full consideration in this matter.

Ed Martin III, President, KPACA 252-2554.

Cap Shafer, Dibble Creek Rock, 399-4550

Larry Smith, D&L Construction, 398-4284

Robert Peterkin, Northwind Properties LLC, 252-7482

Dave Yragui, 252-1891

Dan Michel, Valley View Gravel, 252-1833

Jake Denbrock, SND Enterprises, 252-0156

Glen Martin, Great Northern Construction and Management, 252-5326





Lou Oliva, L&J Enterprises, 252-1300

Marty Oberg, Peninsula Construction, 398-6331

Matt Letzring, Letzring Inc., 398-5263

Mark Rozak, Steam on Wheels, 252-2335

Troy Jones, East Road Services Inc., 235-6574, 399-1297

Terry Best, 398-1268

Chad Hammond, Hammond Trucking, 398-6715

Scott Foster, Foster Construction, 394-1977

Dennis Merkes, Merkes Builders, 398-3369

Richard Encelewski, Ninilchik Native Assoc., 348-0884, 567-3866

Cole Peterson, Metco Alaska llc, 362-7142

Randy Chumley, A&L Construction, 398-3048

Sean McKeown, Knik Construction, 907-545-3637

**From:** K, E, & E Martin <[keeconstructionllc@yahoo.com](mailto:keeconstructionllc@yahoo.com)>  
**Sent:** Sunday, January 30, 2022 12:14 PM  
**To:** Pierce, Charlie <[CPierce@kpb.us](mailto:CPierce@kpb.us)>; Planning Dept, <[planning@kpb.us](mailto:planning@kpb.us)>; Kelley, Sean <[skelley@kpb.us](mailto:skelley@kpb.us)>; Blankenship, Johni <[JBlankenship@kpb.us](mailto:JBlankenship@kpb.us)>  
**Subject:** Fw: <EXTERNAL-SENDER>The Doctrine of Estoppel

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

KPB Assembly & Borough Mayor,  
 Please consider a no vote on 2021-41 or any substitution.

Go back to square one, with a work group made up of 4 individuals from the Industry & 4 Concerned Property Owners only. Allow them to find consensus on the issues that the Government has powers to enforce **& only those powers (ie: ZONING or not under a second class Borough ?)** . Anything beyond lawful KPB Code & Enforcement powers needs to be resolved in Civil Court. The KPB Administration shouldn't become referee for conflicts ahead or after citizen civil controversies regarding Private Property Rights. .

The government should provide assistance (information ) of Law, Jurisdiction & by what means to the KPB can Enforce Code! We feel this is the only equitable solution to this controversy now appearing currently before the Administration, Assembly & it's citizens.

As far as the requested "REMAND " on the civil cases , stay out of it entirely regardless of any demand of the Superior Court order(s). The only response should be "we did our job now do yours & we advise consideration of applying the Doctrine of ESTOPPEL.

It appears to us the time to defend the permits the KPB has issued has maybe long past! You failed to honestly do any defense for the Permit Holders. Why is that ? Being the party who issued the permit(s), you should defend it/them!

No Government should be the catalyst for controversy! Please consider our views.  
 Ed & Kathleen Martin.

KEE Construction, LLC

January 6, 2022

Mr. Ed Martin III  
President  
Kenai Peninsula Aggregate and Contractors Association  
via email: Kpac Association [kpacassociation@yahoo.com]

Re: Comments on KPB proposed material site ordinance amendments

Dear Mr. Martin:

You have requested that I review the recently proposed Kenai Peninsula Borough material site ordinance amendments introduced December 7, 2021, by the Mayor along with your suggested revisions to the amendments and provide comments. You and I have also discussed the process leading up to these proposed amendments. My comments are provided pro bono as a courtesy to your organization, as well as to the Kenai Peninsula Borough and all residents and businesses interested in this topic.

I do not have any current clients or projects in the Borough that I would consider a conflict of interest, however I do have more than 39 years of experience performing hydrogeologic work in Alaska with some of it on the Kenai Peninsula, as well as relevant experience being involved in the regulation and management of complex resource development issues from both government and private sector perspectives.

My comments are grouped into two areas: 1) the process of developing these amendments; and 2) technical considerations regarding gravel pits and groundwater resources.

### **Process**

The draft ordinance amendments state that:

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;

From our discussion, it is obvious that the material site work group did not operate on a level playing field, but rather produced its findings through majority vote. In my opinion, this is a fatal flaw of the process that resulted in the current proposals.

As background, I have been involved in two work groups regarding very complex and controversial topics that were highly successful as a result of operating on a level playing field. By this I mean that all decisions, large and small, were made by consensus, not majority rule.

In the 1980s, there was considerable concern over potential and actual groundwater and water well contamination issues on the Kenai Peninsula related to the oil and gas industry. The result was that I, as an employee of the Alaska Division of Geological and Geophysical Surveys, co-

5701 PENNY CIRCLE, ANCHORAGE, AK, 99516

[jamunter@arctic.net](mailto:jamunter@arctic.net)

PHONE (907) 345-0165; FAX (907) 348-8592

chaired the Kenai Peninsula Groundwater Task Force. This task force obtained considerable funding from the oil and gas industry that was operating on the peninsula at the time to conduct groundwater studies to better understand groundwater resources and disposal sites such as the Sterling Special Waste Management Site. The condition placed on the task force by industry representatives in order to participate and provide funding was that of a "level playing field". While sometimes it took quite a bit of time to achieve consensus, the results were durable and not very controversial.

More recently, the Alaska Department of Environmental Conservation initiated a statewide effort to regulate the drilling of single-family domestic wells. A Stakeholders Working Group (SWG) was convened to explore the issues, and again, all work was conducted by consensus. The group was hugely successful in developing a set of Best Management Practices for drilling private single-family wells, in developing another document for properly decommissioning wells and in creating a new website with numerous resources for well owners:  
<https://dec.alaska.gov/eh/dw/dwp/private-wells/>.

I bring these examples to your attention because, in reviewing the proposed amendments and your comments, it is apparent that these proposed amendments are complex and controversial, often interrelate to one another, and would benefit greatly from more work by a working group operating collaboratively by consensus prior to being considered for adoption.

It is worth noting that in our society ever-tightening environmental regulations are typically a one-way street. The long-term harm from over-regulating resource extraction is increasing costs and increasing scarcity of the resource on the open market. Sand and gravel resources are fundamentally important to the orderly economic development of the Kenai Peninsula Borough, are not highly transportable from other locations, and are dependent on time-limited extraction activities at most sites as a result of resource depletion. In south-central Alaska, there are many examples of reclaimed former gravel pits (some with ponds) that are important assets for long-term community development and wildlife.

A working group operating by consensus should be afforded whatever time it takes to achieve results. They should self-organize, with Chairs or Co-Chairs selected on the basis of impartial administration of the group. A potentially long timeframe should be considered for this important work because the KPB currently has a functional ordinance governing gravel resource extraction to serve in the interim. While many would likely consider the existing ordinances imperfect, it seems that it is far more important to get revisions right, rather than to get them fast.

In a nutshell, the existing proposed amendments should be scrapped and the whole process should start over with a level playing field amongst all stakeholders who agree to work in a collaborative and productive atmosphere towards improvements to the existing ordinances.

### **Technical considerations**

There are many legitimate issues associated with gravel pits such as noise, dust, traffic, visual impacts, etc. which I will not address. One of the key concerns that commonly arises with gravel pits is impacts to groundwater or surface water resources. This is important, because while land

and gravel resources are typically privately owned, water resources in Alaska are reserved to the people for common use and responsibility for their management is delegated to agencies. Also, water has the uncanny habit of moving from place to place. So what happens to water at a gravel pit does not stay at the gravel pit.

The existing ordinance allows excavation into the water table under certain conditions. Proposed revisions by Kpac suggest loosening those restrictions and allowing more general mining of sand and gravel to a depth of up to 15 feet below the water table.

There is not a clear-cut answer to how mining of aggregate resources below the water table should be regulated. As described above, this should be subjected to deliberation by a stakeholder working group operating under consensus rules. Below, however are some considerations.

First, mining resources below the water table is not inherently "bad" or "not permissible" by agencies. The recently completed and approved Environmental Impact Statement for the proposed Donlin gold mine in southwest Alaska, for example, proposes digging an open pit about two miles long, one mile wide and more than 1/4 mile deep that would fill almost to the brim after mining to form a pit lake. With mining below the water table, however, precautions are warranted to protect nearby users of groundwater and potentially-affected surface water resources, wetlands and wildlife.

Throughout south-central Alaska, and notably in the Anchor Point area, numerous old gravel pits are now flooded to form small lakes or ponds. Some of these features provide wildlife habitat and potential visual and recreational enhancement for neighboring homes and businesses.

During gravel pit operations, one of the largest concerns about groundwater contamination comes from accidental fuel spills. All gravel pits should have rigorous and robust measures in place to prevent such spills and some degree of capacity to clean up spills if they occur.

The current ordinance calls for a two-foot vertical separation between the bottom of a pit and the seasonal high water table under most conditions. The rationale for this separation is not clear. In the event of a sizeable fuel spill, such a buffer would not be very useful in preventing fuel from reaching the water table. In a gravel pit, fuel would tend to infiltrate vertically downward from the spill point and "pancake" out on the surface of the water table two feet or more below the ground. The pore-space storage that would capture spilled fuel before reaching the water table could be as low as about 10 gallons. Once a spill encountered the water table, dissolved fuel components would begin to migrate in a downgradient direction along with the groundwater. To be most effective, cleanup should be rapid and may entail excavating a large quantity of contaminated sand and gravel. In contrast, if a fuel spill reached a gravel pit pond, the resulting sheen and/or floating product would likely be immediately obvious. Sorbents and/or booms stored on-site could be rapidly deployed to contain and mop up the bulk of the contamination.

Some perspective on regulatory requirements for two- or four-foot separation to the water table may be useful. It is a common regulatory requirement that the distance between the bottom of a septic system leachfield and the top of the seasonal high water table must be at least four feet.



The reason for this requirement is that wastewater percolating downward from leachfields needs to receive aerobic (i.e. oxygenated) subsurface treatment in the unsaturated zone between the bottom of the leachfield and the low-oxygen saturated sediments below the water table in order to treat and removed certain compounds and microorganisms from the wastewater. Such logic does not apply to gravel pits where no wastewater treatment occurs.

Part of Kpac's proposed revision to ordinances is that, in order to make wider and taller surrounding berms (10 ft high rather than 6 feet high) and simultaneously preserve the economic viability of extracting aggregate resources, excavation below the water table should be considered along with appropriate protective measures.

A consequence of extracting sand and gravel below the water table is that the total footprint of gravel pits in any given area may be reduced. This could occur because if there is a fixed market demand for aggregate the aggregate has to come from somewhere. If pits were able to extract an additional 17 vertical feet (two feet above and 15 feet below the water table) of aggregate resources from part of their operation, then it follows that fewer net acres of land surface would need to be disturbed to meet the market demand.

One useful protective measure for water table excavation would be the prohibited distance to surrounding water wells or even potential water well locations on nearby undeveloped property. A gravel pit should not "shadow" a potential well location on a nearby property such that the property is undevelopable using a well and a septic system. A large public water-supply well, for example, must be sited more than 200 feet from certain potential sources of contamination, and that distance should be considered as suitably applicable for private well distances from gravel pit ponds, as well.

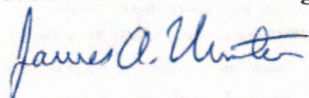
Another potential contaminant source from excavating below the water table is fine silt or clay that could become entrained in groundwater and travel some distance towards a well. Again, a protective distance to surrounding wells, especially if groundwater flow directions can be determined, would likely be the most practical way of reducing risk from entrained silt or clay in groundwater.

The concept of requiring the bottom of an excavation to be 15 feet above nearby private well intake openings is only marginally protective. This is because, if a contaminant plume should develop in groundwater, lateral and vertical dispersion (i.e. spreading) of the plume could readily exceed this amount. Also, the construction details of nearby wells are not always known.

Should you have any questions, please call me at 907-345-0165 or 907-727-6310 (cell).

Sincerely,

**J. A. Munter Consulting, Inc.**



James A. Munter, CPG

Certified Ground Water Professional No. 119481

Alaska Licensed Professional Geologist No. 568

Comments on KPB materials site revisions

Page 4 of 4

January 6, 2022

## Turner, Michele

---

**Subject:** FW: <EXTERNAL-SENDER>Fw: DEC Drinking Water regulations related to gravel extraction  
**Attachments:** image001.png

**From:** Kpac Association <[kpacassociation@yahoo.com](mailto:kpacassociation@yahoo.com)>  
**Sent:** Thursday, January 20, 2022 2:08 PM  
**To:** G\_Notify\_AssemblyClerk <[G\\_Notify\\_AssemblyClerk@kpb.us](mailto:G_Notify_AssemblyClerk@kpb.us)>  
**Subject:** <EXTERNAL-SENDER>Fw: DEC Drinking Water regulations related to gravel extraction

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Hi Johni,  
Please forward to the assembly.  
Ed Martin III  
President  
KPACA  
252-2554

----- Forwarded Message -----

**From:** Palmer, Charley (DEC) <[charley.palmer@alaska.gov](mailto:charley.palmer@alaska.gov)>  
**To:** [kpacassociation@yahoo.com](mailto:kpacassociation@yahoo.com) <[kpacassociation@yahoo.com](mailto:kpacassociation@yahoo.com)>  
**Cc:** Rypkema, James (DEC) <[james.rypkema@alaska.gov](mailto:james.rypkema@alaska.gov)>; Miller, Christopher C (DEC) <[chris.miller@alaska.gov](mailto:chris.miller@alaska.gov)>  
**Sent:** Monday, January 10, 2022, 10:06:57 AM GMT-9  
**Subject:** DEC Drinking Water regulations related to gravel extraction

Hi Ed Martin,

As mentioned before, we have little authority with respect to land use activities near a public water system in our current regulations, 18 AAC 80. For that reason, we did work with the Division of Water to update a Best Management Practices document found at <https://dec.alaska.gov/water/wastewater/stormwater/gravel/>, to include consideration of nearby public water systems. I've cc'd Jim Rypkema in case he has anything to add regarding the BMP document. I've also cc'd my supervisor, Chris Miller, just so he's aware of our communication.

As requested, below are relevant regulations that could apply:

**18 AAC 80.015. Well protection, source water protection, and well decommissioning.**

(a) A person may not

(1) cause pollution or contamination to enter a public water system; or

(2) create or maintain a condition that has a significant potential to cause or allow the pollution or contamination of a public water system.

(d) A person who owns or is responsible for a well, hole, or excavation into a water supply source or potential water supply source for a public water system shall use appropriate methods as follows to protect the water supply source as required under (a) of this section:

(1) if the well, hole, or excavation is either active or temporarily inactive, the person shall maintain the well, hole, or excavation using appropriate methods, including methods set out in (b) of this section;

(2) if the well, hole, or excavation is permanently inactive or abandoned, the person shall protect, seal, or fill the well, hole, or excavation using appropriate methods approved by the department as set out in (e) of this section;

(3) in this subsection “wells, holes, or excavations” include

(A) a well that may or may not be used for potable water;

(B) a hole drilled, augured, or jetted for the purpose of subsurface exploration or sampling;

(C) a cathodic protection well; or

(D) another form of excavation that might contaminate a public water supply source.

**18 AAC 80.020. Minimum separation distances.**

(a) A person may not construct, install, maintain, or operate a public water system unless the minimum separation distances in Table A, in this subsection, are maintained between a potential source of contamination and a drinking water source for the public water system.

**TABLE A.**  
**Minimum Separation Distances<sup>a</sup> Between Drinking**  
**Water Sources and Potential Sources of Contamination**  
**(Measured horizontally in feet)**

Type of Drinking Water System	
Potential Sources of Contamination	Community Water Systems, Non-transient Non-Community Water Systems, and Transient Non-Community Water Systems
Wastewater treatment works, <sup>b</sup> wastewater disposal system, <sup>b</sup> pit privy, <sup>b</sup> sewer manhole, lift station, cleanout	200
Community sewer line, holding tank, <sup>b</sup> other potential sources of contamination <sup>c</sup>	200
Private sewer line, petroleum lines and storage tanks, <sup>d</sup> drinking water treatment waste <sup>e</sup>	100

Notes to Table A:

<sup>a</sup> These minimum distances will be expanded, or additional monitoring will be required under 18 AAC 80.020(b) and (e)(2).

<sup>b</sup> Distance to a drinking water source is measured from the nearest edge of the drinking water source to the nearest edge of the potential source of contamination.

<sup>c</sup> Other potential sources of contamination include [but are not limited to] sanitary landfills, domestic animal and agricultural waste, and industrial discharge lines.

<sup>d</sup> The minimum separation distances for petroleum storage tanks do not apply to tanks that contain propane, or to above-ground storage tanks or drums that, in the aggregate, have a storage capacity of less than 500 gallons of petroleum products, and that store only petroleum products necessary for the operation and maintenance of pumps, power generation systems, or heating systems associated with a potable water source.

<sup>e</sup> Drinking water treatment wastes include the backwash water from filters and water softeners, and the reject water from reverse osmosis units.

(b) The department will require a greater separation distance than that required by Table A in (a) of this section if the department determines that additional distance is necessary to protect surface water, groundwater, or a drinking water source. The department will make this decision after considering soil classifications, groundwater conditions, surface topography, geology, past experience, or other factors relevant to protection of surface water, groundwater, or drinking water.

Regards,



## **Charley Palmer**

Hydrologist 3

*FAA Certified sUAS (drone) Pilot*

DEC-EH | Drinking Water Program

Drinking Water Source Protection

PHONE 907-269-0292

[charley.palmer@alaska.gov](mailto:charley.palmer@alaska.gov)

555 CORDOVA STREET

ANCHORAGE, AK 99501



**Turner, Michele**

---

**Subject:** FW: <EXTERNAL-SENDER>Fw: Gravel pits with waterbodies

**From:** Kpac Association <[kpacassociation@yahoo.com](mailto:kpacassociation@yahoo.com)>  
**Sent:** Thursday, January 20, 2022 2:11 PM  
**To:** G\_Notify\_AssemblyClerk <[G\\_Notify\\_AssemblyClerk@kpb.us](mailto:G_Notify_AssemblyClerk@kpb.us)>  
**Subject:** <EXTERNAL-SENDER>Fw: Gravel pits with waterbodies

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Hi Johni,  
Please forward to the assembly as comment on 2021-41  
Ed Martin III  
President  
KPACA  
252-2554

----- Forwarded Message -----

**From:** Peterson, Ryan E (DEC) <[ryan.peterson@alaska.gov](mailto:ryan.peterson@alaska.gov)>  
**To:** Kpac Association <[kpacassociation@yahoo.com](mailto:kpacassociation@yahoo.com)>  
**Cc:** Wilfong, David L (DEC) <[david.wilfong@alaska.gov](mailto:david.wilfong@alaska.gov)>; Bear, Tonya (DEC) <[tonya.bear@alaska.gov](mailto:tonya.bear@alaska.gov)>  
**Sent:** Friday, January 7, 2022, 01:34:23 PM GMT-9  
**Subject:** RE: Gravel pits with waterbodies

Good Afternoon Ed,

Thank you so much for the inquiry. In regards to your question of what applicable regulations of the wastewater disposal regulations 18 AAC 72 could apply during the development of a materials site resulting in the creation of surface water and/or steep slopes, the sections that come to mind are:

18 AAC 72.020(b) which goes over separation distances from a wastewater disposal system to surface water sources; and

18 AAC 72.035(9) which goes over separation distances from a conventional onsite system to a ground surface slope greater than 25 percent with a drop in the surface height greater than 10 feet.

These will cover most private residential systems. If the nearby property or development is a commercial facility, additional restrictions based on site specific considerations may apply.

Please let me know or the Soldotna wastewater review engineer Dave Wilfong, 262-3405, [david.wilfong@alaska.gov](mailto:david.wilfong@alaska.gov), know if you have any additional questions. Thank you!

Ryan Peterson  
Dept of Environmental Conservation / Division of Water  
Engineering Support and Plan Review Section  
43335 Kalifornsky Beach Road, STE 11 Soldotna AK 99669  
[ryan.peterson@alaska.gov](mailto:ryan.peterson@alaska.gov)  
Phone: 907-262-3402 Fax: 907-262-2294  
[septic.alaska.gov](http://septic.alaska.gov)

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

From: Kpac Association <[kpacassociation@yahoo.com](mailto:kpacassociation@yahoo.com)>

Sent: Friday, January 7, 2022 7:24 AM  
To: Peterson, Ryan E (DEC) <[ryan.peterson@alaska.gov](mailto:ryan.peterson@alaska.gov)>  
Subject: Gravel pits with waterbodies

CAUTION: This email originated from outside the State of Alaska mail system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Ryan. Per our conversation yesterday, could you write me back something referring to the DEC waste water divisions regulations regarding waterbodies and slopes that could occur in the development of a material site? Thanks, Ed.

Sent from my iPhone

02021-41

**Turner, Michele**

---

**Subject:** FW: <EXTERNAL-SENDER>Fw: [External Email]Info on gravel pit habitat  
**Attachments:** Gravel Pit Ponds as Habitat Enhancement for Juvenile Coho Salmon pnw\_gtr212.pdf;  
Guidelines for Gravel-Pit Wetland Creation 0653-Prange.pdf; Nancy St Article.pdf; Nancy  
St As-Built-lowres (002).pdf

**From:** Kpac Association <[kpacassociation@yahoo.com](mailto:kpacassociation@yahoo.com)>  
**Sent:** Thursday, January 20, 2022 2:03 PM  
**To:** G\_Notify\_AssemblyClerk <[G\\_Notify\\_AssemblyClerk@kpb.us](mailto:G_Notify_AssemblyClerk@kpb.us)>  
**Subject:** <EXTERNAL-SENDER>Fw: [External Email]Info on gravel pit habitat

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Hi Johni,

Could you send this to the assembly for comment on 2021-41? It is from the forest service about some amazing uses they have done with old gravel pits that have been excavated into the water table. Reclamation benefits and options.

Ed Martin III  
President  
KPACA  
252-2554

----- Forwarded Message -----

**From:** Cross, Adam -FS <[adam.cross@usda.gov](mailto:adam.cross@usda.gov)>  
**To:** Kpac Association <[kpacassociation@yahoo.com](mailto:kpacassociation@yahoo.com)>  
**Sent:** Thursday, January 13, 2022, 02:40:43 PM GMT-9  
**Subject:** RE: [External Email]Info on gravel pit habitat

Good Afternoon Ed,

I wanted to share some of the literature my co-workers located. Some of it is a bit older but still relevant. Unfortunately, the FS has not published much if anything about the work of transitioning gravel ponds into salmon habitat or even recreational areas in Portage Valley. The area is a great "show me" example for folks who may be interested.

I hope the attached will be helpful.

Best Regards,  
Adam

Adam Cross  
KPZ Aquatics Program Manager  
Forest Service  
Chugach National Forest, Kenai Peninsula Zone  
p: 907-288-7715  
f: 907-288-5111  
[adam.cross@usda.gov](mailto:adam.cross@usda.gov)  
33599 Ranger Station Spur  
Seward, AK 99664  
[www.fs.fed.us](http://www.fs.fed.us)

Caring for the land and serving people

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

From: Kpac Association <[kpacassociation@yahoo.com](mailto:kpacassociation@yahoo.com)>  
Sent: Thursday, January 6, 2022 10:52 AM  
To: Cross, Adam -FS <[adam.cross@usda.gov](mailto:adam.cross@usda.gov)>  
Subject: [External Email]Info on gravel pit habitat

[External Email]

If this message comes from an unexpected sender or references a vague/unexpected topic; Use caution before clicking links or opening attachments.

Please send any concerns or suspicious messages to: [Spam.Abuse@usda.gov](mailto:Spam.Abuse@usda.gov)

Great conversation with you today! Any info you have on any pits converted to habitat would be appreciated. A simple letter explaining your success in that area would be excellent to start a discussion in the presentation I'm producing for the KPB. Thank you so much! Ed Martin. 252-2554.

Sent from my iPhone

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Pacific Northwest  
Research Station

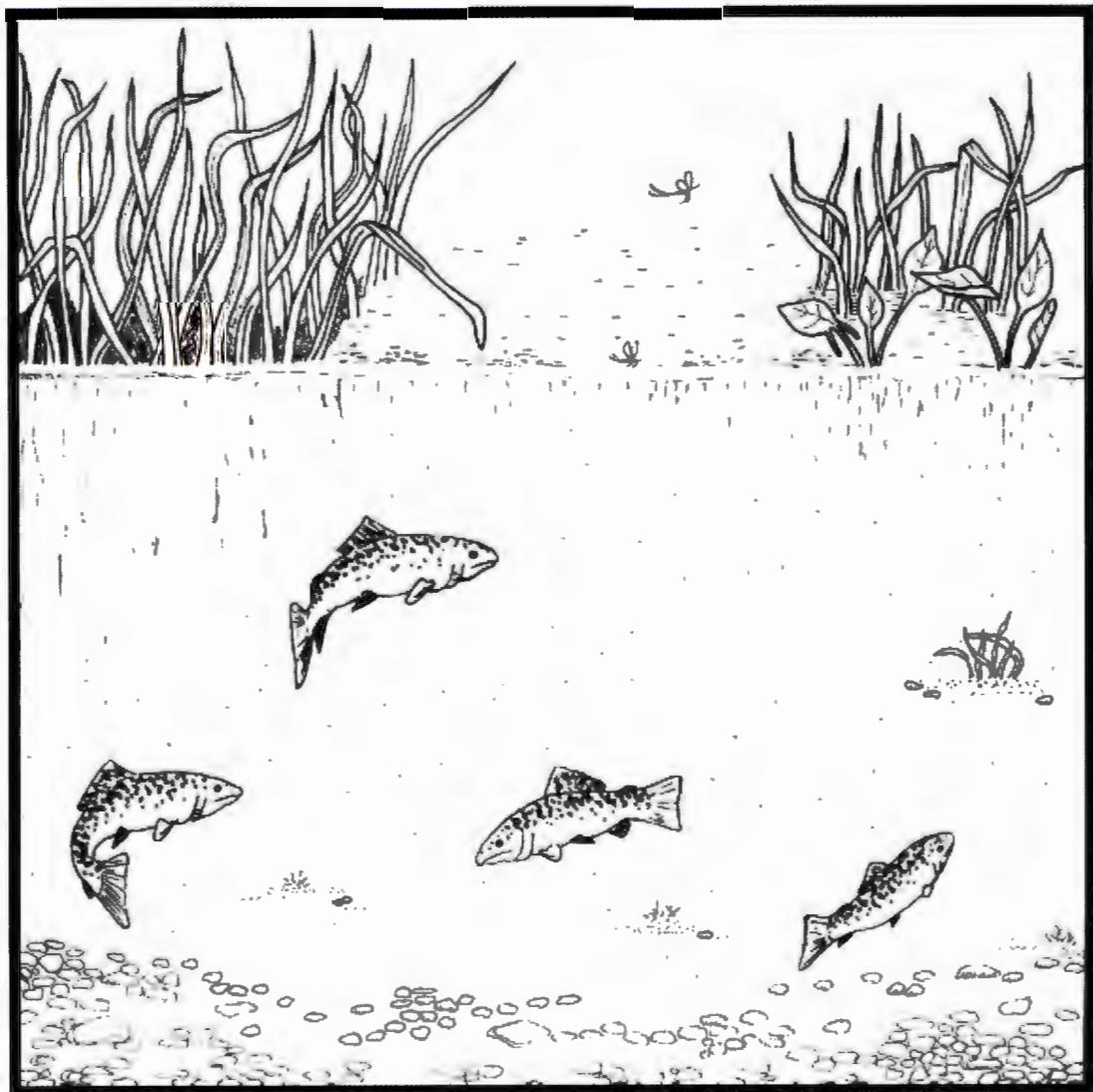
General Technical  
Report

PNW-GTR-212



# Gravel Pit Ponds as Habitat Enhancement for Juvenile Coho Salmon

Mason D. Bryant





**Author**

MASON D. BRYANT is a research fishery biologist, Forestry Science Laboratory, P.O. Box 20909, Juneau, Alaska 99802.

## Abstract

**Bryant, Mason D. 1988.** Gravel pit ponds as habitat enhancement for juvenile coho salmon. General Technical Report PNW-GTR-212. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 10 p.

Gravel pits built during road construction in the early 1970's near Yakutat, Alaska, filled with water and were connected to nearby rivers to allow juvenile salmonids to enter. Seasonal changes in population size, length and weight, and length frequencies of the coho salmon population were evaluated over a 2-year period. Numbers of coho salmon fluctuated, but two of the ponds supported high populations, more than 2,000 fish, throughout the study. These ponds appeared to support coho salmon throughout the winter. The range of physical measurements of the ponds did not seem to account for differences in numbers of salmon, but low concentrations of dissolved oxygen were detected in all ponds near the bottom. Aquatic vegetation, water exchange rate, and access may have affected the number of coho salmon in the less-productive ponds.

Keywords: Fish habitat, salmonids, stream habitat management, southeast Alaska, Alaska (southeast).

## **Contents**

1	<b>Introduction</b>
1	<b>Methods</b>
2	<b>Results</b>
8	<b>Discussion</b>
10	<b>Literature Cited</b>

## Introduction

Road construction and forest development are commonly associated with detrimental effects on salmonid habitat; with proper planning, however, such effects can be avoided. In this paper, I discuss a method to improve salmonid production in conjunction with road construction.

Juvenile coho salmon (*Oncorhynchus kisutch*) are aggressive, invasive, and mobile (Allee 1974, Chapman 1962, Skeesick 1970). Sheridan<sup>1</sup> suggested that the gravel pits, created during road construction on the glacial outwash of the Yakutat forelands (Alaska Department of Fish and Game 1984), would be exploited by juvenile coho salmon if the ponds were connected to river systems containing coho salmon. Several gravel pits that had filled with water were connected by artificial channels to nearby rivers during the 1970's. Coho salmon fry were observed in the ponds, but no systematic effort was undertaken to estimate the number of fish in the ponds or to evaluate their effectiveness as rearing habitat.

The purpose of this study was to determine if these ponds were suitable rearing habitat for juvenile coho salmon. Numbers of juvenile coho in four ponds were estimated over several seasons. Size and ages were determined. Selected chemical and physical measurements were taken on the ponds to identify factors that could account for differences in salmon populations.

Although ponds are not generally associated with coho salmon habitat, beaver ponds and riverine ponds have been identified as productive coho habitat in Alaska and in Washington in recent years<sup>2</sup> (Bryant 1984, Peterson 1982). Russell and Schramek (1984) found about 2,500 coho salmon fry and 500 fingerlings in a gravel pit associated with a beaver pond during the summer of 1977. They did not follow the populations through the winter, however. Both Peterson (1982) and Russell and Schramek (1984) reported seasonal migrations to and from the ponds. Although most of these studies were on natural ponds, their results indicate that ponds created by gravel borrow pits can support juvenile coho salmon; such ponds may be an inexpensive method to increase coho salmon production.

## Methods

Four ponds-Nine-Mile, Green, Twenty-Two-Mile, and Beanbelly-were sampled monthly from July through October 1983 and during spring or early summer and autumn in 1984 and 1985. Minnow traps (mesh size = 6.3 mm) were baited with salmon eggs and distributed along the edge of the ponds, usually within a few meters of the bank, 1 to 2 m deep. A few were placed in the middle of the ponds. Between 26 and 30 traps were sufficient to sample each of the ponds. In 1984, Twenty-Two-Mile Pond was not sampled because of low coho salmon populations. Green Pond was not sampled in 1985 for the same reason. Traps were allowed to fish for 1 hour, long enough to capture a sufficient sample. Longer periods occasionally resulted in high mortalities. Mortalities incurred during handling were identified and removed from the experiment.

All fish were identified and measured (total length). Scales and weights were taken from a subsample of the salmonid population. Salmonids were marked by punching a hole in the caudal fin. In the fall of 1984, salmonids were marked by freeze branding (Bryant and Walkotten 1980).

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<sup>1</sup> Sheridan, W.L. 1970. Coho salmon habitat improvement-on glacial outwash plains. U.S. Department of Agriculture, Forest Service, Region 10. Unpublished.

<sup>2</sup> Sanders, G.H. Movement and territoriality in juvenile coho salmon (*Oncorhynchus kisutch*) in a southeast Alaska pond. Alaska Department of Fish and Game, Juneau, AK. Unpublished report.

Population size was estimated either with the Schnabel multiple mark and recapture method or the Bailey modification of the Peterson estimate (Ricker 1975). The Schnabel method was used in all the 1983 samples. The method varied in later samples because of limited sampling time. The multiple mark and recapture experiments were conducted over a period of 5 days or less. Emigration and immigration were negligible during the summer. During of the summer sampling periods, water levels were low and streams into and out of the ponds were either not running or had small flows. Increased rainfall in the autumn resulted in higher flows, but mark and recapture samples were done over a period of 2 or 3 days to minimize the effect of fish moving into or out of the ponds.

All four ponds were surveyed to determine surface area. Depth profiles were not made, but maximum depths were determined during secchi disk and oxygen measurements. Temperature and oxygen were measured with a YSI<sup>3</sup> oxygen meter in 1983 and 1984. Oxygen measurements in June 1985 were made with the Alsterburg modification of the Winkler method (U.S. Environmental Protection Agency 1974).

## Results

The number of coho salmon in Nine-Mile and Beanbelly Ponds increased from July to October in 1983. Each pond supported more than 3,500 coho salmon in the fall of 1983 (fig. 1). Green and Twenty-Two-Mile Ponds were not sampled after October 1983 because few fish were captured. The number of coho salmon in Green Pond declined from an estimated 2,700 in August to a point where no estimate was possible in October (fig. 1). The number of coho salmon in Twenty-Two-Mile Pond was consistently low.

<sup>3</sup> Use of trade names is for the information and convenience of the reader. Such use does not imply endorsement by the U.S. Department of Agriculture of any product or service to the exclusion of others that may be suitable.

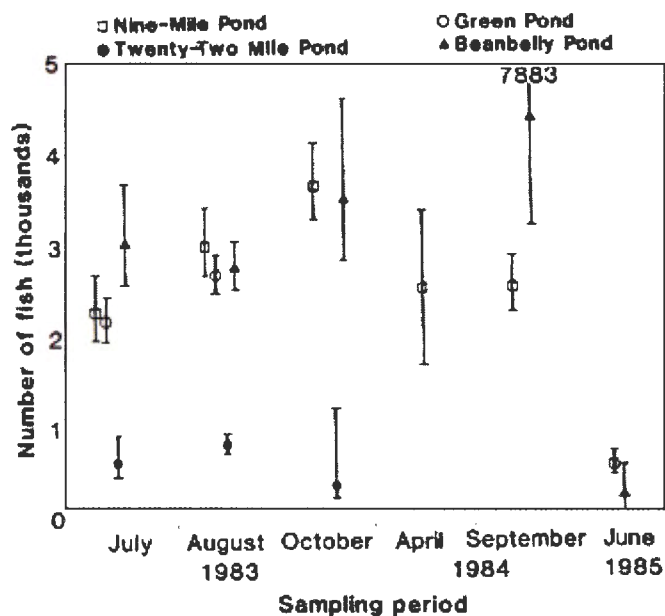


Figure 1—Population estimates of coho salmon captured in Nine-Mile, Green, Twenty-Two-Mile, and Beanbelly Ponds from 1983 to 1985.



Population estimates in Nine-Mile and Beanbelly Ponds were made October 1983, April 1984, September 1984, and June 1985 to assess overwinter use of the ponds. Beanbelly Pond was not sampled in April, 1984 because snow on the road made it inaccessible. In Nine-Mile Pond, the number of juvenile coho salmon decreased from 3,666 to 2,547 between October 1983 and April 1984. Fin punches applied in October were observed in the April sample; therefore, coho salmon overwintered in the pond, but emigration and immigration likely occurred between the sample periods. Because of heavy snow, the ponds were not sampled until the 1st week in June 1985. The low populations in both ponds in June may be attributed to smolt migration. Comparison of length frequencies in September 1984 and June 1985 in Beanbelly Pond corroborate this migration (fig. 2). In September 1984, the median length of coho salmon in Beanbelly Pond was 88 mm (total length), and more than 10 percent of the total catch was longer than 100 mm; in June 1985, the median length was 82 mm, and less than 2 percent of the total catch was longer than 100 mm.

A few coho salmon marked with freeze brands in September 1984 were recovered from both ponds in June 1985, but they numbered less than 1 percent of the total catch; therefore, overwinter survival cannot be estimated. Recovery of marked fish in June 1985 and the persistence in the ponds of coho salmon that were at least 1 year old in the spring and early summer of 1984 and 1985 indicate that the ponds are used over the winter.

Recruitment to the ponds appears to be the result of upstream migration of juvenile coho, except in Beanbelly Pond which is fed by a stream with spawnable habitat. Recruitment of fry into the ponds appears to begin in June. During May 1984, fewer than 5 percent of the coho salmon caught in Nine-Mile Pond were smaller than 62 mm (total length); by September, more than 16 percent were smaller than 62 mm (fig. 3). Between July and September, the percentage of smaller coho salmon increased slightly in Nine-Mile Pond, indicating that fry moved into the pond. In Beanbelly Pond, the percentage of smaller coho salmon decreased slightly from July to September in 1983, suggesting that smaller fish did not move into the pond and that the difference in size was the result of growth.

Significant differences occurred among the length-weight regressions computed for the coho salmon captured in the four ponds in July and August 1983 (table 1). Throughout the analysis, Nine-Mile Pond shows a consistently higher slope than the other ponds, indicating more robust fish and better growth. In September 1983, large differences appear in the slope of the regression for Twenty-Two-Mile Pond (2.2) compared to those of Nine-Mile and Beanbelly Ponds (2.8 and 2.7). The lack of significance in September 1983 may result from the smaller sample size in Twenty-Two-Mile Pond compared to that in the other two ponds.

Although depths of each pond varied, each had a relatively uniform profile tapering from a deep end to a shallow end with steep sides. The least productive pond, Twenty-Two-Mile, was also the shallowest. Green Pond and Nine-Mile Pond were similar in depth and shape (table 2); both are connected to the Situk River. Beanbelly, the largest and deepest of the four ponds, has an irregular shape and is more like a natural pond. It is fed by a perennial stream.

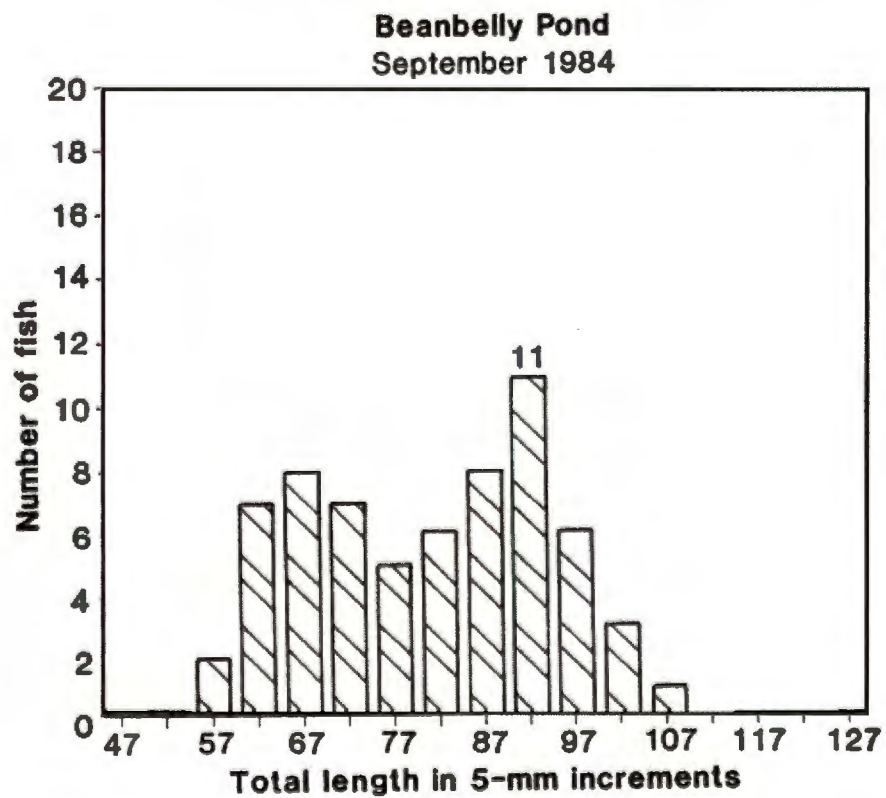
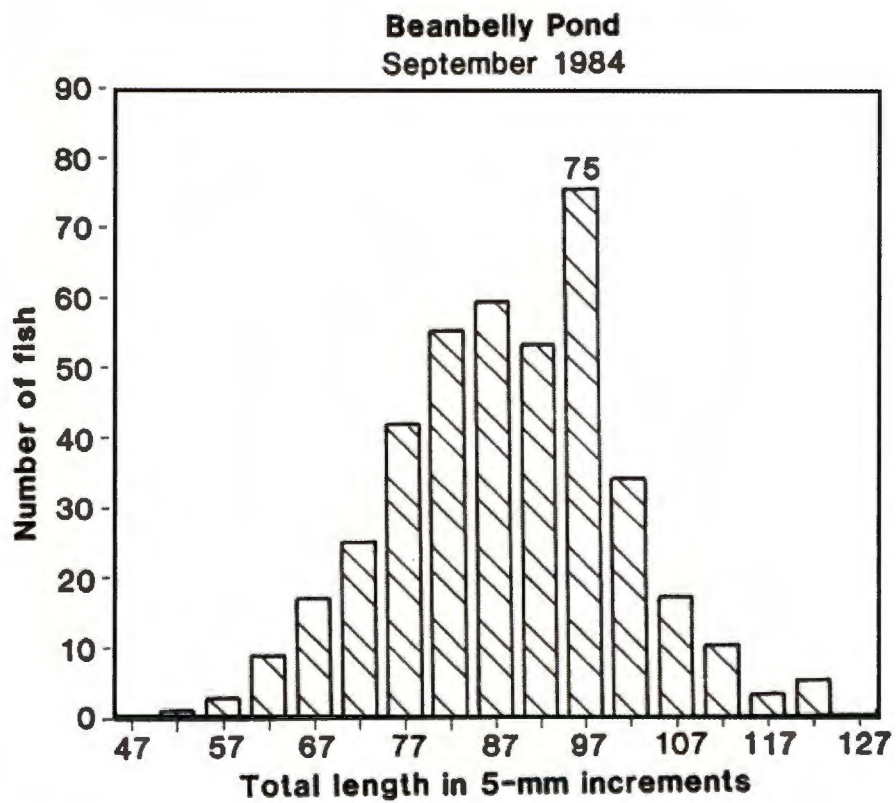


Figure 2—Length frequency distribution of coho salmon captured in Beanbelly Pond in September 1984 and June 1985.

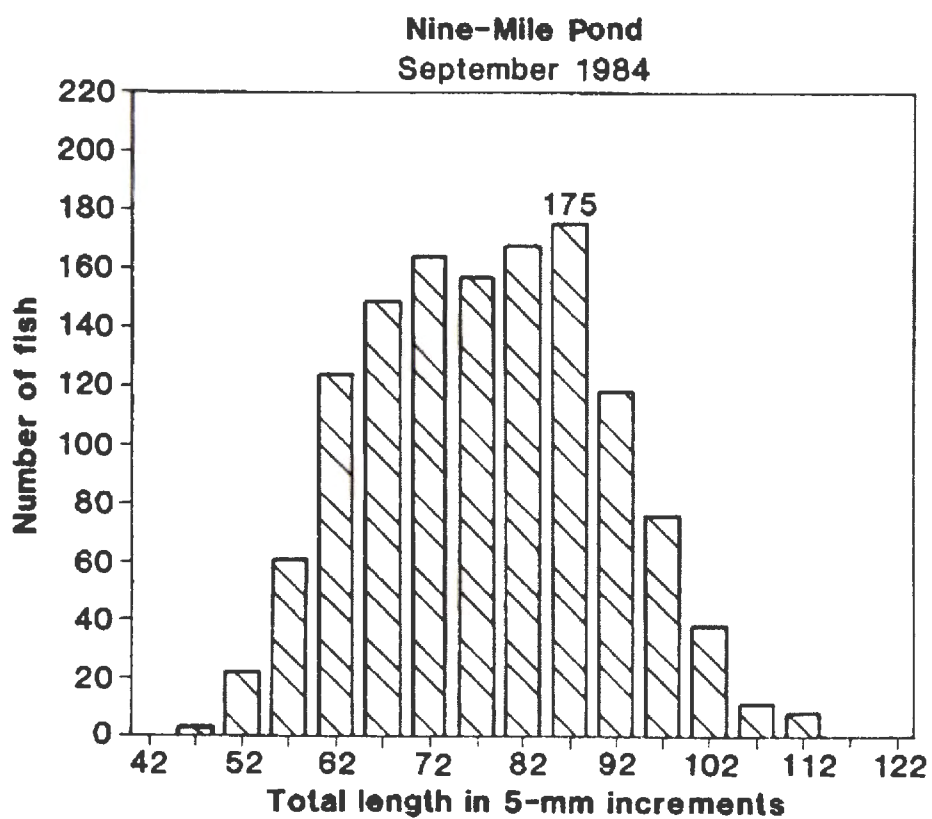
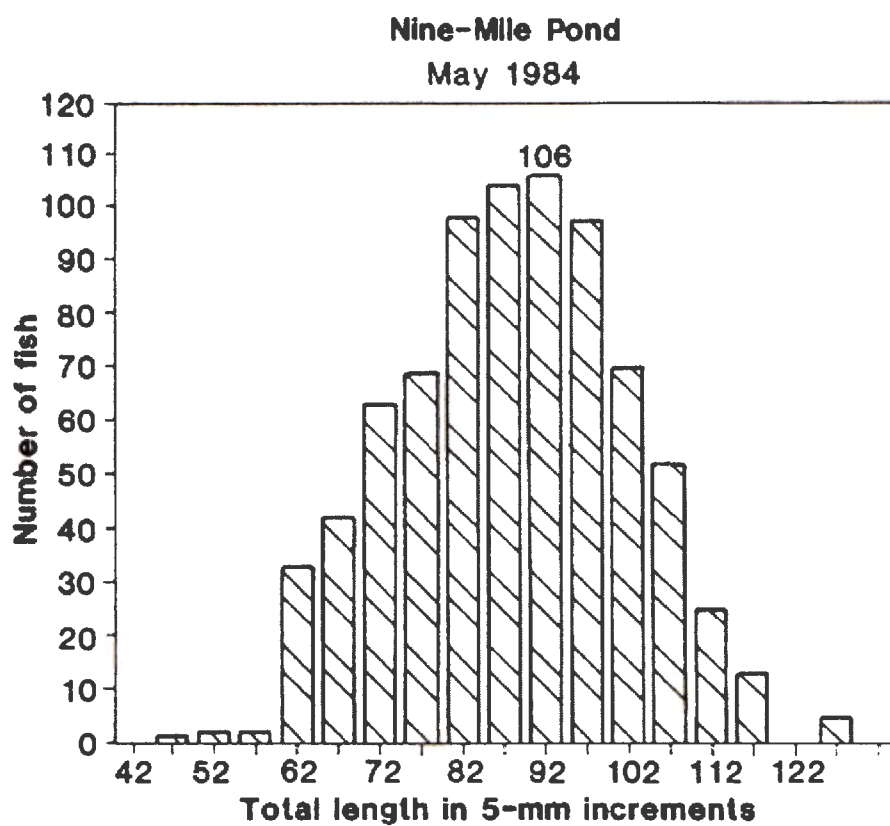


Figure 3—Length frequency distribution of coho salmon captured in Nine-Mile Pond in May and September 1984.

Table 1-Differences among ponds in length-weight regressions

Date and pond	Intercept	Slope	Significance	
	a	b	Level	Slope
July 1983:				
Nine-Mile	-5.3683	3.157		
Green	-4.0452	2.482	≤ .05	≥ .05
Twenty-Two-Mile	-4.1865	2.5663		
Beanbelly	-3.9622	2.4281		
August 1983:				
Nine-Mile	-5.1244	3.0233		
Green	-4.153	2.5325	≤ .05	≥ .05
Twenty-Two-mile	-4.844	2.867		
Beanbelly	-5.1789	3.0326		
Sept. 1983				
Nine-Mile	-4.783	2.8378		
Green	—	—		
Twenty-Two-Mile	-3.6585	2.2101	≤ .05	≥ .20 (NS)
Beanbelly	-4.5538	2.7266		
April 1984				
Nine-Mile	-5.1337	2.9813		
Green	-4.6439	2.7453	≤ .05	≥ .05
Twenty-Two-Mile	—	—		
Beanbelly	—	—		

— = no data: NS = not significant

Table 2—Yakutat gravel pit ponds morphology

	Area	Volume <sup>a</sup>	Maximum depth	Average depth <sup>b</sup>
	<u>Square meters</u>	<u>Cubic meters</u>	<u>-----Meters-----</u>	
Green	7,644	9,500	2.5	1.25
Nine-Mile	10,010	12,513	2.5	1.25
Twenty-Two-Mile	27,972	27,513	2.0	1.0
Beanbelly	34,954	61,170	3.5	1.75

<sup>a</sup> Volume = area times average depth.

<sup>b</sup> Average depth = maximum depth divided by 2

Temperature and oxygen were slightly stratified in all ponds during the summer and winter. The ponds were isothermal in the spring and fall (fig. 4). Oxygen supply depends partly on the water-exchange rate in each of the ponds during periodic thaws throughout the winter. Oxygen levels near the bottom of the ponds were lowest during December but were above 5 p/m at the surface in all four ponds. The dissolved oxygen supply may have become critically low later in the winter after a thick layer of ice formed.

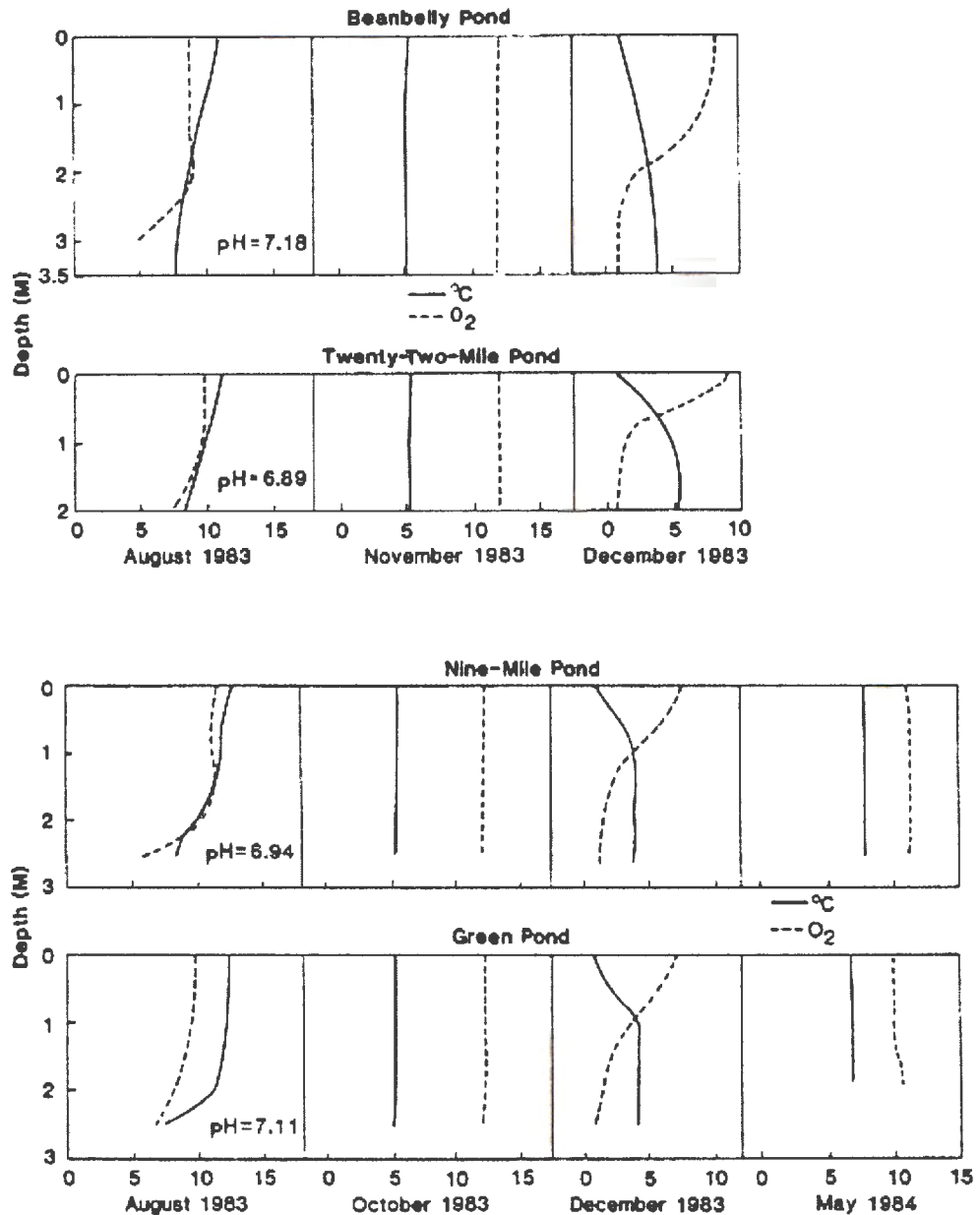


Figure 4—Seasonal temperature and oxygen profiles for Green, Nine-Mile, Twenty- Two-Mile, and Beanbelly Ponds.



## Discussion

All four ponds were used to a greater or lesser extent by juvenile coho salmon during the study. Even over the short period of this study, populations fluctuated from year to year. In Green Pond, the salmonid population virtually disappeared after the fall of 1983. The population at Twenty-Two-Mile Pond was consistently low. Beanbelly and Nine-Mile Ponds consistently supported the highest populations of coho salmon.

None of the morphological or chemical features measured during the study appear to account for the differences and changes in the coho salmon population in the ponds. A more likely explanation may be the connection between the ponds and the river. Both Nine-Mile Pond and Beanbelly Pond had well-defined channels between the ponds and the river. The outlet to Twenty-Two-Mile Pond was poorly defined. Neither Twenty-Two-Mile Pond nor Green Pond had a defined inlet channel. Although ground water is an important source of water for the ponds, flow of surface water into and out of the ponds may be an important factor determining the water quality of the ponds as habitat for juvenile coho salmon.

Because all juvenile coho salmon immigrated into the ponds, the channel between the river and the ponds is critical to their use by coho salmon. All ponds were apparently accessible at high-flow periods (spring and fall) to juvenile coho salmon in the adjacent rivers, but the less well-defined channels connecting Twenty-Two-Mile Pond and Green Pond may have contributed to the low populations in these ponds. A poorly defined channel has lower velocity and is less likely to be found by the fish. Once found, it may not offer a clear path to the pond.

The coho salmon in the less productive ponds appeared to be less robust than those in the other two ponds. Where significant differences among length-weight regressions occurred, the lower values were associated with the ponds that had fewer coho salmon; therefore, factors other than access may be affecting productivity in the ponds. Among possible factors that were observed but not evaluated in this study are food and competition. Food may be a limiting factor and the differences in length-weight ratios may reflect fewer aquatic organisms available for food in these ponds. Large populations of threespine sticklebacks (*Gasterosteus aculeatus*) were observed in all the ponds. Beanbelly, Nine-Mile, and Twenty-Two-Mile Ponds had a dense cover of aquatic plants, and the bottom of Green Pond was covered with a dense mat of algae. The dense cover of aquatic vegetation would contribute to a large stickleback population by providing excellent habitat for reproduction and cover for newly hatched sticklebacks. The effect of competition for space and food between sticklebacks and coho salmon was not studied. Aquatic plants and algal growth would also contribute to low concentrations of benthic dissolved oxygen during fall and winter as the vegetation died and began to decompose. In addition, sticklebacks may be able to tolerate lower dissolved oxygen concentration than coho salmon.

Timber along the bank was apparently not a factor in any of the ponds. Twenty-Two-Mile Pond was the only one with large trees along the bank. These trees did not appear to influence the pond. Willow (*Salix* sp.) and alder (*Alnus* sp.) were the dominant vegetation along the banks of the other ponds. Based on observations of numbers of coho salmon captured near vegetation in the water, coho salmon do not appear to prefer brush habitat associated with these ponds. Nevertheless, shrubs along the bank may provide cover and a source of terrestrial insects to coho salmon.

Although the results of this study show differences among the ponds, specific factors controlling numbers of coho salmon in the ponds were not identified. The range of morphological and chemical differences measured in the ponds did not appear to affect numbers of coho salmon. The ponds apparently provide habitat for juvenile coho salmon although low dissolved oxygen sometimes may increase mortality. Coho salmon apparently remain in the ponds through winter.

The design of artificial ponds for juvenile coho salmon habitat should include several important morphological features. Adequate water quality is necessary throughout the year, particularly during the winter. A perennial flow of surface water into the pond may satisfy this requirement. The second requirement is access. An effective method for providing both these features is to construct an upstream inlet from the stream to the pond and a downstream outlet from the pond to the stream. Other favorable features include an average depth greater than 2 meters and bank vegetation for shade and cover.

Additional study on the effects of competitive interaction between salmonids and other species such as sticklebacks, the role of aquatic vegetation as cover and its effect on water quality, and the effects of pond morphology and water exchange rates could improve the design of artificial ponds. As projects are effectively evaluated, design criteria will be improved to increase the effectiveness of similar ponds. Ponds have not been extensively used as an enhancement tool for increasing coho salmon production, but they offer a promising and often low-cost enhancement method.

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Gravel pits built during road construction in the early 1970's near Yakutat, Alaska, filled with water and were connected to nearby rivers to allow juvenile salmonids to enter. Seasonal changes in population size, length and weight, and length frequencies of the coho salmon population were evaluated over a 2-year period. Numbers of coho salmon fluctuated, but two of the ponds supported high populations, more than 2,000 fish, throughout the study. These ponds appeared to support coho salmon throughout the winter. The range of physical measurements of the ponds did not seem to account for differences in numbers of salmon, but low concentrations of dissolved oxygen were detected in all ponds near the bottom. Aquatic vegetation, water exchange rate, and access may have affected the number of coho salmon in the less-productive ponds.

**Keywords:** Fish habitat, salmonids, stream habitat management, southeast Alaska, Alaska (southeast).

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# Recycled Soils Enhance Wetland Habitat in Juneau, Alaska

by Michele Elfers

*IN* disturbed ecosystems needing reclamation, excess materials from development projects offer new opportunities for wildlife habitat enhancement. The Nancy Street Wetland Enhancement Project pioneered a creative strategy to partner the development needs of a fill disposal site with desirable conservation goals. The project utilized clean native soils generated by a high school construction project in the Mendenhall Valley of Juneau, Alaska, to reclaim a 1950s era gravel pit into a functional wetland. Clean fill material was deposited and shaped to create mixed wetland topography, including a stream channel, deep and shallow water areas, and small islands. Plantings of emergent wetland, riparian, and upland vegetation improved habitat for fish and wildlife and water quality in what is part of a state designated impaired waterbody.

Located along Duck Creek in the Mendenhall Valley, the enhancement of the Nancy Street gravel pit was identified as a priority project in the Duck Creek Watershed Management Plan (National Marine Fisheries Service, 1999). Intense residential development over the past forty years in the Mendenhall Valley has impacted Duck Creek significantly. The increase of nonpoint source pollution, channelization, and above-grade stream crossings has degraded water quality and habitat. In 2002, the Alaska Biological Monitoring and Water Quality Assessment Program Report rated Duck Creek the lowest for habitat variables of all

streams studied in Southeast Alaska (Alaska Department of Environmental Conservation, 2003). Poor habitat quality has reduced anadromous fish populations such as coho and chum salmon, and has impacted habitat for the large number of mallards and other waterfowl that use these wetlands as refuge from nearby popular hunting zones.

In the 1950s and 1960s, gravel extraction created three adjacent, open water pits on the East Fork of Duck Creek. The most downstream pit is located at Nancy Street. Groundwater flowing into the pit carries dissolved iron from soil strata, which reacts with atmospheric oxygen upon reaching the surface. The resulting formation of iron oxide precipitate (iron "floc") decreases the concentration of dissolved oxygen in the water column, impacting aquatic inverte-

brates and fish. While not inherently toxic, iron floc also settles into the substrate, clogging gravel beds that might

**The gravel pit at Nancy Street is located less than one mile from the high school construction site, and the enhancement project opportunity required a substantial amount of fill that had previously not been available.**

otherwise provide good spawning habitat for fish.

The Engineering Department at the



Emergent wetlands are created along the perimeter of a deep water pool for juvenile coho salmon habitat.



City and Borough of Juneau (CBJ) initiated the wetland enhancement project in 2005 when designs for a new high school indicated a large amount of excess soil would be generated during construction. Transport of the fill for disposal would have required a three mile drive to a privately owned waste site. The gravel pit at Nancy Street is located less than one mile

**Using the Nancy Street pit as a fill disposal site, the CBJ Engineering Department charged the high school construction contractor a lower rate for fill disposal and used the revenue to recover a portion of the land purchase cost.**

from the high school construction site, and the enhancement project opportunity required a substantial amount of fill that had previously not been available. CBJ



The construction of a new high school contributed 64,000 cubic yards of clean fill to the wetland enhancement of the former gravel pit.

began coordinating with the U.S. Fish and Wildlife Service (USFWS) and the Natural Resources Conservation Service (NRCS) to use the clean native soil for wetland enhancement at the Nancy Street pit.

Consolidation of land ownership was the first step toward reclaiming the pit. CBJ owned most of the seven acre site, but a large parcel encompassing both open water wetland and upland areas was privately owned. The parcel was purchased for \$137,000. Using the Nancy Street pit as a fill disposal site, the CBJ Engineering Department charged the high

school construction contractor a lower rate for fill disposal and used the revenue to recover a portion of the land purchase cost. The cost to the CBJ of filling the Nancy Street site, including the land purchase, was \$319,000. The cost of the typical market alternative was \$572,000. By undertaking the wetland enhancement project partially funded by USFWS and NRCS cost share programs, the CBJ saved \$253,000 on the cost of the high school construction.

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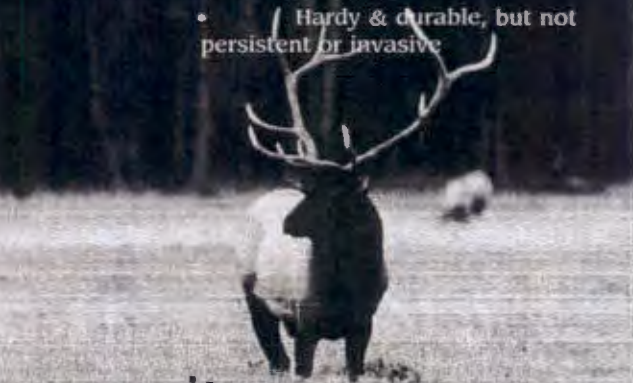
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and wetland enhancement project, the CBJ contracted the engineering firms Toner-Nordling Associates for the initial fill design and R&M Engineering, Inc. for the design development of the filling process. Glacier State Contractors, Inc. executed the design. To maintain flow through Duck Creek, a stream channel at a minimum of four feet deep was designed to meander through the wetland. From the perimeter of the wetland, shallow platforms, or marsh "fingers", were filled to allow for the planting of emergent marsh vegetation for fish and wildlife foraging and protective habitat. During construction, the fingers provided functional benefit by allowing access for dump trucks to the center of the wetland for filling. At each end of the wetland, two deep water areas were left in place to provide overwintering habitat for juvenile coho. After nine months of filling in 2005, 64,000 cubic yards were placed to create the wetland, resulting in increased savings for the CBJ.

An earthen dam was constructed to control water levels at the project site and in the two upstream pits. This occurred



AmeriCorps workers, with a local youth agency, SAGA, transplanted over 5,000 native plants from nearby wetlands into the former gravel pit.

after the filling and revegetation phase to create more stable and drier conditions during construction and planting. A meandering outlet stream was excavated

to allow fish passage through the earthen dam. Both the dam and the outlet stream were constructed using an impermeable liner to prevent water loss. Layers of

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became an important component in gaining public approval and support of the project. Adjacent landowners initially viewed the enhancement project as disruptive, but through the process of filling, planting and trail construction, many neighbors and community members have expressed that the enhancement is an improvement to the neighborhood. It offers recreational opportunities for a neighborhood composed of streets and private property, and provides access to a successional landscape with a fantastic view of the Mendenhall Glacier.

To encourage neighborhood use of the site, CBJ and Trail Mix Inc, constructed a six foot wide gravel trail, and a deck was sited at the south end to capture a remarkable view across the wetland of the Mendenhall Glacier. The decking on the observation deck and boardwalk, railings, and benches were built with recycled plastic lumber. An island at the north end is accessed by a bridge and boardwalk and offers a bench and viewing point south. The 70' bridge is a steel gangway recycled from a CBJ Docks and Harbors improvement project.

Throughout the construction process, volunteers donated time, materials and money to the project. Neighbors began appearing during the summer construction to comment on how excited they were about the project. The CBJ Ports and Harbors Department donated the bridge and benches and the U.S. Coast Guard Engineering Division volunteered to construct the observation deck.

As a result of the success of this project, a similar process is planned for the Allison Pond upstream of the Nancy Street Wetland. The process will be improved based on the lessons learned and applied to the Allison Pond site needs. The strategy and process developed by the Engineering Department at the CBJ has saved the taxpayer's money by pioneering this alternative option to fill disposal. The support of resource agencies, local organizations, and citizen volunteers has enhanced habitat for fish and wildlife and reclaimed a valuable community resource. **L&W**

For more information contact Michele Elfers, City & Borough of Juneau, Alaska, (907)586-0931, e-mail: [michele\\_elfers@ci.juneau.ak.us](mailto:michele_elfers@ci.juneau.ak.us).

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cobbles and gravel for spawning were placed on top of the stream channel liner to create riffles and shallow pools.

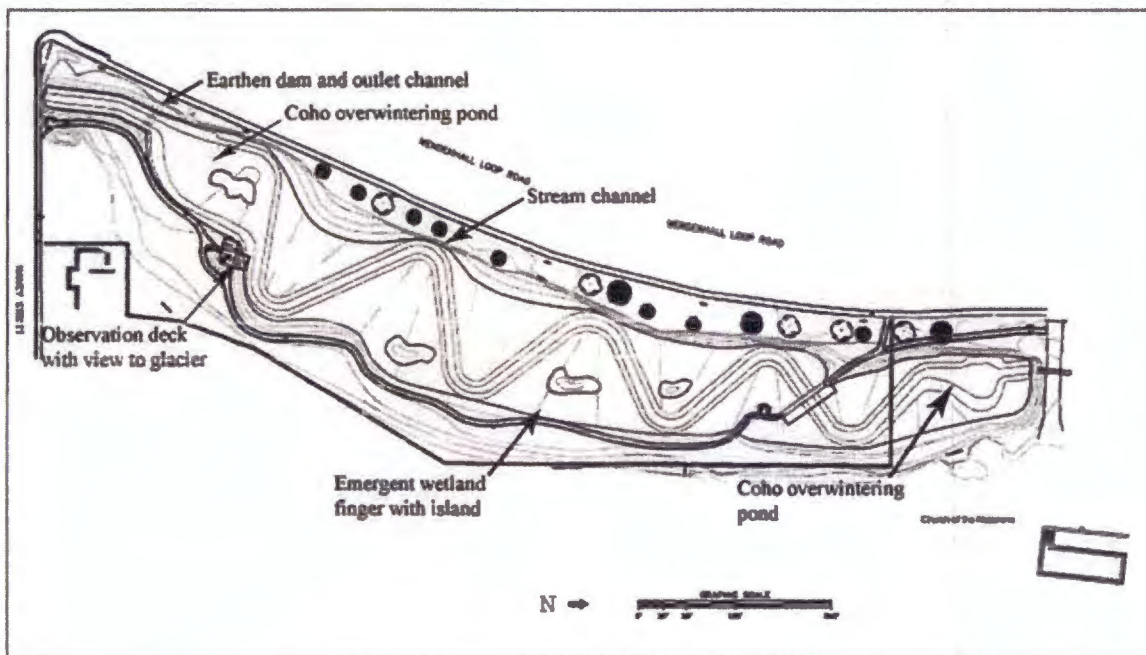
The site design and implementation plans of the filling process determined both habitat improvement and operational efficiency. By filling and completing

tritic zones based on the depth of water in which they grow. Although the Nancy Street Wetland is primarily ground water fed, precipitation and surface runoff influence the water level and will therefore affect the survival and composition of the site's wetland plant community.

Alaska and British Columbia. All planting work was done by hand using shovel bulb planters, and pulaskis.

#### Lessons Learned:

To improve the revegetation process for future projects, better planning for irrigation should be in place prior to transplanting. As mentioned earlier, the dam was constructed after the completion of the planting of the emergent vegetation. Revegetation occurred between the months of April and August when Juneau received thirty inches of rain. However, a two-week period of unusually warm, sunny weather desiccated the high marsh area. Watering was necessary, but difficult to accomplish on such a large site. Crews used buckets and a garden quality



each "finger" and section of the wetland individually, greater variety and attention to each landform was introduced. Initially the option of filling the entire site and then returning to dredge the stream channel had been considered, but would have resulted in less diversity of habitat and less attention to the design details. The chosen approach facilitated meeting the design elevations to within 3 inches to provide necessary habitat for emergent wetland plants—a difficult task on a large project where over 60,000 cubic yards of fill are being placed.

Revegetation planning began in early 2006 by researching and evaluating three locally constructed wetlands and interviewing local naturalists experienced in reclamation and revegetation projects. There was no previously documented information on constructed wetlands in Southeast Alaska, so this project is being carefully monitored to provide baseline information that can be used for development of future wetland enhancement projects. For the purpose of planting design, plants were divided into concen-

During the planting season of 2006, volunteers from the community and Americorps workers funded by USFWS planted over 5,000 emergent plugs and cuttings, and 150 lbs of grass and forb seeds. As there are no native plant nurseries in Juneau or Southeast Alaska, the workers transplanted plugs and cuttings from local wetlands to maintain native gene stock and minimize the possibility of importing invasive plants. Seeds were purchased or donated from sources in

gasoline-powered water pump to irrigate the wetland. Some plant mortality occurred, and it is likely that a prolonged period of hot, dry weather would have significantly impacted plant survival. To prevent this from happening on future projects, fill and topsoil with a higher organic content than what was used in this project would help retain moisture. Other strategies include controlling water levels to keep soil saturated while planting, or the delaying of planting until July when precipitation is more reliable and frequent in Juneau.

There is some concern that the water level is higher than the designed level. However, the rainfall was higher than average in 2006, so it is difficult to tell the water levels in the wetland will drop. For this reason, designing a dam with adjustability to account for the discrepancy in water level would improve the function and success of the project.

#### Recreational Use of the Site:

The design and development of a community trail through the wetland

**There was no previously documented information on constructed wetlands in Southeast Alaska, so this project is being carefully monitored to provide baseline information that can be used for development of future wetland enhancement projects.**



# Guidelines for Gravel-Pit Wetland Creation

by

Bonnie Baldwin Prange

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**Abstract.** The frequent colonization of the margins of abandoned and unreclaimed wet sand and gravel pits by typical marsh vegetation indicates the feasibility of a created wetlands component in gravel/sand reclamation planning. Using the natural pit wetlands as models and examining the pertinent literature, guidelines were developed for: (1) selecting promising sites, (2) planning with a regional perspective, and (3) construction and monitoring. Key concepts are: hydrological stability and adjacent land uses that will not have an adverse impact; consideration given to how a pit wetland will interact with adjacent ecosystems on a regional level; grading of pit perimeters to produce irregular contours and no more than a 0.6 m change of elevation within the proposed wetland; a combination of limited deliberate planting along with natural colonization whenever the reclamation permit can be adjusted to allow the 3 to 4 years commonly necessary for such colonization; the establishment of self-perpetuating marsh vegetation confirmed over a 3-year period of observation as a minimum requirement for determining permit compliance. Longer term monitoring of pits reclaimed under these guidelines could provide information that would increase and refine post-mining land-use options for wet sites. Research projects could focus on learning more about development of wetland functions within created systems, eventually providing standards for evaluation on a functional level.

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## Introduction

Wetland creation is still in its infancy as an applied science and is not yet capable of producing predictable results. It is, consequently, a subject of considerable controversy. To some it appears to be a relatively simple, repeatable process; to others a minefield of assumptions regarding ecosystem structure and function. The experimental nature of wetland-creation has made it less attractive for mine reclamation proposals, resulting in very little effort made to purposefully create gravel-pit wetlands, even where conditions are very favorable. The vast majority of wetlands and waterbodies on mined lands nationwide exist not because they were planned for, but by accident as a result of the mining of gravel for highway and other construction projects (Brooks, 1990). As examples

of natural regeneration, these sites can provide valuable information regarding the species composition, life-support functions, and long-term persistence that might be expected in future "successful" wetland creations.

Without substantial scientific evidence, which we do not have, there is no reason to assume that these volunteer wetlands function on the same level or provide the benefits of the long-established ecosystems which have been filled-in and lost to agriculture and development. It seems likely, however, that even disturbed and degraded wetland sites may have unknown value. Increasingly, studies indicate that these sites may be very significant for rare species, migratory birds, and regional hydrological functions (Josselyn and others, 1990). "Sites presumed to have little value may provide vital

refuge for species during storm events or support rare and endangered species due to lower interspecific competition within these marginal habitats" (Josselyn and others, 1990).

Scientists have now begun to study wetland creation and restoration in an effort to manage and accelerate processes which may take generations to occur naturally. From these experimental studies will come information which may ultimately allow true replacement of lost or damaged ecosystems. More research is needed, and sand/gravel pits are in many instances ideal as test sites. Excavations that expose the water table commonly create the hydrological features necessary for a wetland, and they eliminate the need for diking and high-maintenance pumping and drainage systems.

The gradual colonization of numerous abandoned wet pits by wetland species indicates both their suitability for subsequent use as a planned wetland and the potential to add to the wetland resource base. Innovative reclamation could supply valuable habitat, contribute to regional hydrological resources, and provide research opportunities to improve our understanding of artificial wetlands. Sand/gravel-pit wetlands offer benefits to society with which mining companies could be pleased to be associated and identified.

### Minimum Site Requirements

#### Hydrology

Hydrology is the key to long-term functioning of wetland ecosystems (Kusler and Kentula, 1990). Since establishment of hydrophytic vegetation will depend on both the predictability and controlled fluctuation of water levels, wetland creation should be restricted to those sites for which seasonal water-level elevations have been determined and where some manipulation is possible. Freshwater gravel-pit wetlands not in river or stream beds will be dependent on ground water and variable surface water flows.

Ground water and surface runoff do not always provide dependable water sources, but in most situations they will satisfy the requirements of a wetland project (Van Egmond and Green, 1992).

Assessing the reclamation potential of sand or gravel excavations as wetlands should involve monitoring test pits for annual water-level fluctuations. The amount of fluctuation depends on the nature of the aquifer and on how much water mining operations and nearby users consume. Ranges of 2 meters per year are not uncommon in porous sand and gravel aquifers with local recharge zones (Michalski and others, 1987). Some gravel-pit sites may not be suitable for wetland development due to extreme variations of the water table. Suitability can not be determined until the expected range of the water-table elevation has been established with statistically sound data. Since a successful wetland design incorporates many site-specific variables, it is not possible to generalize acceptable range maximums or periodicity. A decision must be based on project goals and the requirements and tolerances of the wetland-plant communities that project designers want to establish (T. S. Miller, King County Services, oral commun., 1992). The widely varying flooding tolerances among wetland species can be used to advantage in increasing wetland creation options for a particular site. A flexible plan that can accommodate unexpected changes in plant community composition will have a greater chance of success, especially where ground water flows are seasonally unstable.

#### Potential Land-Use Conflicts

Social considerations may be just as important determinants of site suitability as physical ones. "Adjacent land use . . . could detrimentally impact functioning of wetlands or the wetlands may have detrimental impacts on current or planned uses of neighboring lands" (Hammer, 1992). Intensive agriculture or heavy industry adjacent to the site might produce sediment or chemical-loaded runoff that would prevent wetland establishment.

Wetlands themselves can be unwelcome neighbors. Although some new housing developments and office complexes are planned around preserved sections of wetlands, residents of established communities may well object when wetland alternatives are proposed. Neighborhood opposition often focuses on the prospect of public use, with fears of noise, traffic, and vandalism paramount. Several mining companies have shelved plans to donate lands to the public when faced with organized community opposition (Morris, 1982).

### Planning Pit-to-Wetland Conversions

#### Pre-planning for Realistic Goals

Wetland conversion plans should be "integrated with mining operations and reclamation at the beginning of any project" (Brooks, 1990). This ideal should not preclude adding wetlands to an existing reclamation plan. Wetland creation could be added to a previously permitted proposal for a post-mining open-water pond, for instance, assuming the hydrologic conditions to support the pond had already been established. Reclamation designed around an aquatic ecosystem goal provides direction in the early planning stages, but the decision to attempt creation of specific wetland functions might best be left until mining is nearly complete. At that point the altered hydrology of the site could be re-evaluated, and objectives could be based on several seasons of hydrological data-gathering plus assessment of regional land-use trends over the same time-span. When objectives have been established, they should be clearly described and recorded, along with any subsequent amendments, because on-site modifications during construction and planting are commonly necessary (Hammer, 1992).

Michalski and others (1987) recommend detailed studies to determine surficial characteristics of the site before, during, and after extraction. If pumping of ground water is part of the extraction process, the output could be monitored to estimate in-flow rates and the potential

area of ground-water influence after mining (Michalski and others, 1987). Pre-mining planning could include provisions for hydrological monitoring and record-keeping at various stages over the life of the mine. This provides the database from which to determine the most feasible final configuration. The information would be useful for establishing other reclamation endpoints if it did not ultimately support the proposed wetland goal.

### Regional Reference Wetlands as Guidelines

The most fundamental goal, regardless of the specific chosen objectives, is to develop self-maintaining systems that mimic natural ones in as many ways as possible. The study of local natural wetlands is important because artificial wetlands must closely imitate natural systems adapted to the region if a creation project is to succeed without continual operating and maintenance costs (Hammer, 1992). This means that design parameters must be appropriate to local hydrology, climate, and soil conditions. Measurements of elements of wetland structure at a natural site within the region or watershed that shares these conditions will provide insights into what is obtainable and how to evaluate progress at the constructed site (Hammer, 1992). In the context of comparisons of natural to artificial, the objectives for a created wetland must encompass "only a very early successional stage if the evaluation period is short (less than 10 years for a marsh)" (Hammer, 1992).

### Landscape Considerations

Even if the physical parameters of a site are favorable for reclamation as wetland, the result will be counterproductive if it conflicts with regional land-use priorities or overall ecological balance. "Land managers need to establish their mitigation policies in the context of what changes are occurring in wetland types throughout a given physiographic region, not just on a particular mine site" (Brooks, 1990). Assessing these trends to determine regional need for specific wetland types requires coordination among



federal and state agencies. Cooperating agencies must then see that this information is transferred to those who will be planning wetland construction, including the mining industry (Brooks and others, 1988).

### Constructing a Gravel-pit Wetland

#### Site-specific Considerations and Grading Plans

Since each site presents a particular combination of hydrology, topography, and substrate, only generalized instructions can be provided. There are no exact guidelines yet accepted in the very young science of wetland creation. Given favorable site hydrology, however, it is possible to proceed with assurance that the creation of gentle slopes at pit perimeters plus restoration of topsoil, or even moderately amended subsoil, will result in establishment of wetland vegetation. Many abandoned wet pits have, over time, acquired typical wetland vegetational characteristics with far less encouragement.

Although many mine reclamation plans are submitted in the initial permitting process, it may not be practical to plan the specifics of a post-mining pit wetland until the extraction is nearly complete. At that point it should be possible to draw up a detailed site grading plan which will take the site variables into account. The final hydrological parameters, in particular, may not be fully anticipated or understood until the alterations that mining imposes have actually been realized. The site grading plan is an essential element in engineering the site for wetlands because it will determine basin morphometry, which in turn determines vegetational composition (Garbisch, 1986). Because many wetland plants are sensitive to water depths within a low range of tolerance, the most useful plan would have contours of 1 foot or less at a scale of 1 inch equals 20 to 50 feet (Miller, 1987).

The precision grading required to bring the site to the final grade within the established tolerances may not be possible if water cannot

be excluded from the pit (Garbisch, 1986). In these instances, "the site grading plan should reflect this . . . and specify the scattered mounding of fill materials in order to diversify the wetland habitat" (Garbisch, 1986).

### Shorelines and Slopes

A common recommendation for sand-or-gravel-mine wetland construction is to increase the area of the pit basin by creating an irregular shoreline. Bays, inlets, coves, peninsulas, and islands increase topographic heterogeneity and habitat diversity and provide more "edge" by increasing percentage of shoreline per unit area (Crawford and Rossiter, 1982). Pit floors should also have an irregular topography with mounds and depressions (Norman and Lingley, 1992; Van Egmond and Green, 1992; Michalski and others, 1987). Dumping overburden in irregularly spaced piles will create rough bottom contours and perimeter landforms (Van Egmond and Green, 1992).

Construction of some of these landforms can take place during mining to simplify post-mining reclamation. Overburden and waste materials (including boulders and tree debris) can be graded into landforms above and below the water line (Michalski and others, 1987). Islands for protection of waterfowl and general ecosystem diversity can be developed in undrained pits during operations (Michalski and others, 1987). They should be separated from the shore by a permanent water depth of 1-to-2 m and a width of 4-or-5 m, with tops at least 1 m above the estimated highwater mark (Van Egmond and Green, 1992).

Slopes for a true marsh community need to be almost flat — no more than a 0.6-m change of elevation between the deep and shallow marsh (Miller, 1987). Shallow slopes maximize flooding and minimize erosion (Kruczynski, 1990). Brooks (1990) and Crawford and Rossiter (1982) recommend gentle slopes at 10H:1V or 20H:1V; Kruczynski (1990) suggests that a range of 5H:1V to 15H:1V is acceptable. Since it is unlikely that efficient mining will be possible at

these angles, the cut-and-fill method can be used to create recommended slopes (Norman and Lingley, 1992).

Unless slopes have been left ungraded and unstabilized, gravel-pit waterbodies typically have two distinct habitats: the shoreline wetland and open water. Grading plans will determine how much area will be allotted for each. Fifty percent open water to 50% marsh or swamp is often cited as optimal for fish and wildlife habitat (Van Egmond and Green, 1992; Crawford and Rossiter, 1982). Norman and Lingley (1992) suggest 25% of the waterbody in shallow water less than 0.6 m deep, 25% in shallow water 0.6-2 m deep, and 50% in water greater than 3 m as a general guideline for use by fish and waterfowl. If wetland communities are the objective, however, "the higher percentage of shallow areas the better" (Norman and Lingley, 1992).

#### Water Level Adjustment

Gravel and sand pit-wetland creations are primarily ground water-fed and therefore may not require elaborate water-control mechanisms. According to Van Egmond and Green (1992), "natural cycles of drought and wet spells will sometimes provide adequate changes in water levels." An outlet with a controllable weir will increase management options, however, and will enable periodic partial drainage which helps re-establish wetland vegetation. Van Egmond and Green (1992) recommend that a water-level drawdown should occur every 3 to 10 years. Boule (1988) emphasizes the importance of simple systems which are more likely to be self-regulating and self-maintaining. He advocates relatively inexpensive weirs or other similar devices which are unlikely to fail and disrupt the entire system. Outlets should be identified on-site and recorded in plans so that they can be periodically inspected and protected from erosion (Norman and Lingley 1992).

Branch (1985) reported successful vegetation establishment on a 5-ha portion of an abandoned sand and gravel mine in Maryland using a

device with a removable weir plate which controlled the top 0.3 m of water in the basin. Removal of the weir plate exposed perimeter areas for planting; once this was complete, the plate was reinstalled to restore the project design water levels. Garbisch (1986) suggests that incorporation of an adjustable weir in the project design may compensate for less-than-precise grading.

Although periodic "drawdowns" are important for waterbodies that function as waterfowl habitat, many pit ponds lack surface drainage and "cannot be drawn down using standard dikes and weirs" (Michalski and others, 1987). For landlocked ponds receiving supplemental water from surface runoff, a partial drawdown can be engineered by periodically diverting this surface flow (Michalski and others, 1987). Unless there are concerns about contaminants in the surface water, it can be directed toward the pit-pond impoundments (Van Egmond and Green, 1992). The drainage channels "should have a natural sinuosity and gradient", should be stabilized with riprap or vegetation, and should be directed through upland "vegetated areas to slow runoffs and aid in water filtration" (Norman and Lingley, 1992).

#### Sealing and Lining

Since "most natural wetlands are perched above an impervious layer that reduces or prevents water loss", Hammer (1992) believes that there are few situations in which a basin can sustain a wetlands ecosystem without an impermeable lining. Brooks (1990), on the other hand, states that "basins constructed below the water table rarely need to be sealed." Wet pits have an advantage as wetland creation sites not only because they are filled primarily by ground water flow, but also because natural sealing is common. The material left behind after gravel mining usually has a fairly high percentage of clay or silt, especially if aggregate was washed on site (Bradshaw and Chadwick, 1980). These "fines" will contribute to the blocking of water movement, and over time additional fine sediments will be eroded or carried into the pit lake



with surface runoff (Evoy and Holland, 1989). The extent of this natural sealing will vary from site to site depending on the shape of the pit, bank materials, perimeter vegetation and water turbidity (Durbec and others, 1987). It seems likely, however, that even a partial lining of sediments within the pit would be beneficial from a wetland creation perspective.

## Soils

An appropriate substrate for plant establishment can be created by placing topsoil on banks, islands, and submerged areas that have the recommended shallow grade. Norman and Lingley (1992) recommend a 15-to-20 cm layer of topsoil over a thicker layer of subsoil; Hammer (1992) suggests a 40-to-60 cm total soil layer (topsoil and subsoil) will be needed to provide adequate substrate for root growth. This soil layer should be placed on islands and down to 1.5 m below the expected highwater mark for the wetland perimeter (Van Egmond and Green, 1992). If grading-plan configurations are to remain accurate, the pre-final grades will have to be made lower than the final design elevations to allow room for the topsoil (Miller, 1987).

Stripping and stockpiling of topsoil before mining will reduce reclamation costs later on. To maximize efficient use of on-site materials, clean process-waste fines can be used to augment salvaged topsoil (Hart and Keammerer, 1992). Structural damage can be minimized if soil stripping and replacement is limited to dry periods and if proper machinery (e.g., wide-track crawler bulldozers) is used in re-application (Norman and Lingley, 1992). Any sort of unnecessary equipment movement over the soil should be avoided.

There are varied estimations of appropriate topsoil storage periods. Brooks (1990) specifies a maximum of 3 months. Garbisch (1986) says stockpile duration must be less than 4 weeks. Segmental reclamation is the only procedure that will be compatible with these storage times,

because it allows transfer of topsoil directly from an active mining segment to another segment which is in the process of being reclaimed. This reclamation approach is ideal for larger sites and long-term operations, but it is not always an option where deposit heterogeneity and market fluctuations prevent continual movement of the operation from one segment to the next (Norman and Lingley, 1992). Where longer storage periods are necessary, Michalski and others (1987) suggest seeding of the piles as a way to reduce loss of quality.

For mined sites that have no salvaged topsoil available, the partially weathered subsoil may be an acceptable substitute (Michalski and others, 1987). Garbisch (1986) goes so far as to say that most clean (uncontaminated) inorganic borrow and dredged fill materials will be satisfactory substrates for wetland establishment. Hammer (1992) agrees that "most common substrates are suitable for wetland establishment" and that "wetland plants thrive in a broad range of soil types", but adds that topsoil replacement may eliminate the need for soil amendments.

If subsoil or overburden material is the only planting medium available, then a controlled time-release fertilizer that performs in saturated soils should be put into the substrate together with the transplant (Garbisch, 1986). If the planting is occurring underwater, Garbisch (1986) suggests placing the fertilizer in burlap sacks underneath the transplant. Fertilizers should never be broadcast or spread on the soil surface of wetlands (Shapiro and Associates, 1991). The cost and additional labor necessary to apply these fertilizers would seem to argue for on-site salvaging or site-to-site transfer of topsoil whenever possible.

Straw or hay mulch is another option to consider for any reclaimed site where the substrate lacks organic matter (Brooks, 1990) and could be an inexpensive adjunct or alternative to commercial fertilizer for wetland applications. Street (1982) recommends 1 kg straw mulch per square meter.

## Wetland Vegetation

For wetland creations, there are only two basic reasons for choosing managed revegetation over natural colonization: timing and species composition (Josselyn and others, 1990). Composition, especially, is a factor in many mitigation proposals. Revegetation by artificial means may be required, for example, if a specific wetland plant community is necessary to replace habitat for wildlife species that are losing habitat elsewhere. In these situations it may be advisable to salvage plants from wetland sites that are being destroyed and transfer them to a new site where their genetic diversity is likely to be preserved.

Managed revegetation programs are also generally more successful in controlling exotic species which commonly invade disturbed areas and become established first (Josselyn and others, 1990). These exotics usually have a competitive edge over native marsh species and may form extensive monotypic or low diversity stands that decrease the wildlife habitat or nutrient processing functions of the wetlands they take over. Reed canarygrass (*Phalaris arundinacea*) and purple loosestrife (*Lythrum salicaria*) are notorious local examples in freshwater wetlands.

There are also a few ubiquitous native wetland plants which may be considered undesirable due to their aggressive, weedy characteristics. Many wetland ecologists would advise control of dominants such as common cattail (*Typha latifolia*), willow (*Salix* spp.), and cottonwood (*Populus* spp.) because of their tendency to reduce system diversity and crowd out plants more valuable to wildlife (Hammer, 1992; Odum, 1988; Erwin and Best, 1985). These pioneer colonizers are adapted to invade disturbed sites, and "creation projects often behave like disturbed wetlands" (Odum, 1988). Nonetheless, dominant natives such as cattail, willows and cottonwoods remain popular components of revegetation projects and are found on many lists of suggested species for wetland plantings. As naturally occurring features on most disturbed

freshwater wetland sites, they would seem to be far preferable to weedy exotics and perhaps not worth great effort and expense to control unless their establishment would conflict with project goals.

If a natural seed source is nearby, or if the substrate contains a seedbank from another location, periodic manipulation of water levels in the constructed wetland basin can be sufficient to start germination and retard growth of terrestrial species. Miller (1987) suggests that a seed source can be obtained from mud removed from shorelines of existing ponds and marshes and spread in the shallows (water depth less than 10 cm) of the created site. Brooks (1990) mentions the possible transfer of seed-bearing hydric soils from wetlands scheduled to be altered or filled-in for development. The removal of plants or soil can be justified only when the destruction of the natural wetland is a legally sanctioned certainty and all relevant government regulations have been followed. If these conditions are met, salvaging of plants and hydric soils from nearby development sites or during segmental reclamation should be encouraged as a means of preserving what would otherwise be lost.

A post-reclamation study comparing treatments in a central Florida marshland reclaimed from a phosphate mine provides support for the use of relocated hydric soils. The study determined that topsoiling with a 2-to-10cm-thick layer of "mulch" containing seed and root material obtained from a wetland borrow site showed "distinct advantages over natural revegetation of overburden" (Erwin and Best, 1985). After two full growing seasons, the mulched areas had higher species diversity and more complete vegetative cover than the untreated overburden areas. More importantly, this topsoiling method "appears to encourage the accelerated establishment of late successional plants in sufficient quantities to compete with aggressive weedy species" (Erwin and Best, 1985).

Natural hydric soil seedbanks thus obtained should not be stockpiled for longer than 1 month to avoid desiccation and possible re-oxidation of



metals (Brooks, 1990). Hammer (1992) advises that any wetlands soil reserved for later use should be stored underwater to prevent release of bound metals.

If a legally and ecologically acceptable donor site is available, Hammer (1992) recommends an alternative to digging out and spreading a layer of wetland soils. This method involves collecting cores of wetland soil (10-12 cm diameter and 15-25 cm long) and inserting them in the substrate at the reclamation site. The cores contain seeds as well as roots, tubers and rhizomes and can rapidly develop into a complex wetland community. They are also a reservoir of propagules that may produce additional plant growth for several years after they are installed at the new site. Disadvantages center around labor costs involved in collecting, transporting, and installing the cumbersome and somewhat fragile cores.

If species composition for a particular mitigation purpose is not a concern, and if establishment within a limited time frame and budget is the priority, then a combination of natural colonization and deliberate planting may be the most effective way to establish vegetation on gravel-pit wetlands. Natural regeneration, while not "manageable" enough for situations where precise control over outcome is important (Garbisch, 1986), may provide the best long-term results because the plants will grow where they are best adapted (Clewell and Lea, 1990). The availability of natural seed sources adjacent to the project site or the possibility of seed transport into the site via flood waters needs to be evaluated if natural revegetation is part of the reclamation plan (Clewell and Lea, 1990). The amount of hand planting undertaken should depend on the proximity or reliability of a seed source, labor and materials costs, and time allotted to complete the project.

For those pit wetlands that can or must be hand planted, the best guide for species selection will be found in the vegetative composition of similar nearby wetlands (Hammer, 1992). Local native-plant nurseries, a few of which specialize in wetland vegetation, are sources of advice on

what species combinations will produce the most natural plant communities. The objectives of the reclamation plan, which might include wildlife habitat, aesthetic enhancement, and/or storm-water detention and purification, will also help determine appropriate plant species (McMullen, 1988). The limiting factors, however, will be the physical conditions at the site and the environmental tolerances of available nursery stock.

The type of plant stock chosen will influence timing of planting and vice versa. Spring is usually the best time to plant, with fall the next best choice (McMullen, 1988). Propagules planted in late spring may be less susceptible to wildlife damage due to the shorter time to be expected between planting and germination. These timing recommendations generally apply to the seeds, rhizomes, corms, and tubers of herbaceous species, as well as to the whole plants. Woody vegetation such as trees and shrubs should be planted in the dormant state which generally extends from November through March in the Pacific Northwest (Norman and Lingley, 1992).

A biologist familiar with local wetlands should review the proposed planting design. "The number of each plant species to be used will be based on the type of community, the plant's position in the community, and the required spacing between plants" (Miller, 1987). Miller (1987) generally recommends that trees planted on 4.6-to-7.6-m centers, shrubs on 0.9-to-2.4-m centers and groundcovers on 1.0-m centers would be appropriate for the emergent shorelines of created freshwater wetlands. Marshes created in standing water deeper than 10 cm are most easily established using sprigs (culms), tubers, or rhizomes (Miller, 1987). These propagules are pushed into the mud/mulch substrate on 0.3-to-1.5-meter centers (Brooks, 1990). Plantings should be irregularly spaced in clumps to mimic natural spacing as closely as possible.

The cost of managed revegetation with nursery stock and labor intensive hand planting can be substantial (Brooks and others, 1988). Miller (1987) estimates that approximately 27,000



transplants per hectare will be necessary to establish a created marsh wetland. Costs can be greatly reduced if time expectations and reclamation objectives allow at least partial natural colonization. If the hydrological aspects of a site are favorable to begin with, precise grading and substrate preparation should be enough to assure emergence of at least a few native and/or naturalized wetland species. On sites being created as a diversity-enhancing feature of a mine reclamation plan and not as mitigations for specific wetland losses, this may be all that is needed.

Buffer areas consisting of native upland vegetation and at least 30 meters wide will increase habitat diversity and protect the shoreline and should be planted/seeded on the higher ground surrounding the pit impoundment and created perimeter wetland (Norman and Lingley, 1992). According to Munro (1991), vegetated areas should be provided as buffers between wetlands and adjacent developed land or as transition zones between wetlands and adjacent natural areas even if not required by regulations.

### Post-construction Monitoring

#### Evaluating Success

The construction process, if carefully planned and well executed, should produce a site on which the altered hydrologic conditions favor wetland development. The introduction of wetland plant species, whether by natural colonization or managed revegetation, is only the first step in that development. Wetland functions for which the project was designed might not develop for decades, if at all. According to Hammer (1992), it is "grossly unrealistic to expect to create even the simplest type of natural wetlands systems" within 2 or 3 years after construction. This makes it very difficult for regulators to determine whether a wetland reclamation has been "successful", particularly if the site is part of a mitigation effort to replace the functions of natural wetlands sacrificed to development.

The time limits for completion of revegetation that are specified by many surface-mine regulatory programs are inadequate for the evaluation of created wetlands. Washington State allows 2 years or "such later date as may be authorized by the department" (Chapter 332-18-050 WAC). The literature on wetland creation and restoration indicates that 2 years is not sufficient time for stabilization of new emergent marsh ecosystems. Boule (1988) suggests that establishment and natural perpetuation of plants in marsh and shrub-swamp systems would require 3 to 5 years. Brooks (1990) states that "there is some scientific evidence for the stabilization of emergent marsh systems after three years." Josselyn and others (1990) report their observations that many San Francisco Bay area wetland restoration projects which had been considered revegetation failures became fully vegetated when allowed a 3-to-4-year period of natural regeneration.

Past experience with restored or created wetlands also indicates that revegetation over 1 or 2 years is "no guarantee that the area will continue to function over time" (Kusler and Kentula, 1990). Active monitoring, with periodic review by qualified personnel, would provide some perspective on the direction that site development is following and would allow for timely mid-course corrections if necessary. Reports, submitted within 90 days following sampling, should document any vegetation changes including percent survival and cover of planted and/or volunteer species (Erwin, 1990). Monitoring reports should also document issues related to water levels, water quality, and sedimentation and discuss recommendations for improving the degree of success observed (Erwin, 1990).

#### Short-term vs. Long-term Monitoring

The evidence regarding the establishment of marsh vegetation seems to indicate a minimum 3-year monitoring program for wetland creation projects. Brooks (1990) suggests that expenses for a 3-year monitoring period be included in the cost projections for any mine reclamation plan

with a wetlands component. This allows for assessing of varying conditions over three growing seasons and should not result in unbearable economic burdens on the permittee (Brooks, 1990). Boule (1988) feels that annual monitoring of wetland creations over a 3-year period is the minimum acceptable term; 5 years would be more appropriate for some complex projects. Erwin (1990) agrees that post-construction monitoring should be conducted over a 5-year period, with a minimum of 3 years, and with annual inspections at the end of each wet season.

The short-term monitoring proposed here will not be sufficient for scientific research and data collection, and it will not help redirect evaluations toward establishment of wetland functions rather than appearance. Success in a 3-year time-frame may have to be measured in terms of survival and growth of plant species characteristic of a wetland community with no consideration of functional attributes.

Long-term research projects that will enhance our ability to predict the outcomes of mitigation policy should be encouraged and carried out whenever possible. These projects can focus on learning more about development of wetland functions within created systems and may eventually provide standards for evaluating function. Until such standards exist, personnel responsible for judging compliance with permit requirements will have to rely on the tools at hand. For wetlands created outside a mitigation context the establishment of self-perpetuating marsh vegetation, confirmed over a 3-year period of observation, seems a realistic and appropriately flexible reclamation objective.

### Correcting Problems

In addition to verifying compliance with reclamation plan requirements, monitoring programs can also identify problems which might eventually lead to failure. Miller (1987)

and Garbisch (1986) list several reasons for poor results at some wetland creation projects: improper final grade, invasion or deliberate planting of nonnative plant species, poor planting techniques, inadequate water levels, vandalism, and wildlife predation. Mid-course corrections can often mitigate these problems before the project becomes a lost cause, but corrective measures are best determined by professionals qualified in fields such as wetland science or restoration ecology.

Some created wetlands need long-term management to survive and function as they were intended. This "may include water level manipulation, control of exotics, controlled burns, predator control, and periodic sediment removal" (Kusler and Kentula, 1990). Management of this type beyond a 3-to-5-year program coordinated with annual monitoring is probably not feasible for most reclaimed pit sites. Once the mine operator is released from further obligations under the reclamation permit, the site will have to be self-sustaining. This means that problems that are not correctable within the proposed 3-year monitoring period will continue to have a detrimental influence, perhaps a regional one.

This further emphasizes the importance of site-specific project designs developed from data gathered both before and during the mining operation. Although each site is an experiment within which complete control is never possible, development of a practical, self-sustaining design that uses knowledge of site characteristics is the best defense against the unexpected. Larson (1988) suggests that minimum data requirements for freshwater wetland creation projects include a baseline of information on land-use history, macrotopography, general surficial geology, streamflow, lake hydraulics, and ground water levels and quality. Hart and Keammerer (1992) stress the importance of accurate historical project records documenting the techniques used, including a detailed photographic record. "This information is of paramount importance relative to understanding successes or failures" (Hart and Keammerer, 1992).



## Conclusions

The sand and gravel industry, increasingly under public scrutiny as its operations are encroached upon by suburban development, must now focus on the long-term regional implications of post-mining land-use decisions. It has been proven that worked-out pits lend themselves to a wide range of subsequent uses, but the majority of these uses have come about by accident rather than intent through planning. The natural regeneration that has occurred at many abandoned wet-pit sites indicates tremendous potential for increasing the nation's freshwater aquatic ecosystem resources, but this potential is not being fully used. Wetlands, in particular, have been neglected or overlooked in sand-and-gravel-mine reclamation planning.

Opportunities to balance use of an essential non-renewable resource with development of new resources may in time prove more valuable than the materials which have been extracted. Wetlands are in short supply and increasingly threatened. While creations are not a substitute for mature natural systems, they have the potential to initiate functional wetlands for future generations. For the immediate future, they can add to regional ecosystem diversity and provide habitat for many species of plants and animals. The hydrology of worked-out sand and gravel pits is typically ideal for wetland creation projects. What is needed is industry commitment, cooperation among government agencies, and support from an informed public.

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# **Nancy Street Wetland Enhancement: Assessment of Design and Construction**

Prepared by the City and Borough of Juneau  
Engineering Department  
2006

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## I. Introduction and Site Description

The Nancy Street Reclamation Project pioneers a creative strategy to partner development needs of a fill disposal site with conservation needs of wetland habitat and water quality enhancement. Six acres of wetlands along an impaired anadromous salmon stream became the site of fill disposal for a high school construction project in the Mendenhall Valley in Juneau, Alaska. The filling was designed to provide a platform for wetland emergent plantings and a meandering stream with riffles and deep water pools for juvenile salmon. For the City and Borough of Juneau (CBJ), the purchase of this parcel from a private landowner meant \$137,000 dollars to provide a disposal site only one mile from the construction site. Otherwise, the transport of the fill would require a three mile drive to Lemon Creek. The CBJ Engineering Department charged the contractor a lower rate for fill disposal and used this revenue to partially recover the cost of the land purchase (Appendix 3).

From the conservation perspective, this strategy met goals of a ten year old community watershed plan and the Juneau Wetland Management Plan to improve the habitat and water quality of the Nancy Street Wetland. In the 1950s and 1960s, the land was dredged to extract gravel deposits. The pit filled with groundwater that was high in iron and low in dissolved oxygen. The water from this system enters the Duck Creek system and ultimately flows into the valuable Mendenhall Wetlands. By filling to create an emergent wetland, the plants act as water filters and improve salmon and bird habitat.

The integration of a community participation component to the project raised support and enthusiasm for the creation of the wetland. Local volunteers planted willow and cottonwood in the wetland and various community groups donated time and money to the revegetation and the construction of a trail. Since the construction of the trail, nearby property owners have expressed approval and gratitude for the wetland reclamation.

This document summarizes the planning, design, and construction of the Nancy Street Wetland Reclamation Project. The site description presents the history and ecological problems found in the former gravel pit. Then the design and process of filling, revegetation and trail creation is discussed. Finally, a plan for monitoring and maintenance is proposed in order to measure the functionality and the success of the design and construction. Future plans to fill the Allison Pond as a wetland depend on the economic and ecological success of the reclamation as well as the public perception of the project. This document provides a guide to measure this success.

### *Site Description*

The Nancy Street Wetland is located in the East Mendenhall Valley along Duck Creek, ten miles south of downtown Juneau. As part of a glacial valley, the land has been in flux for centuries, the most prominent example of this being glacial rebound. Only in the past century have people been continuously inhabiting this land. Juneau, as a gold rush town, formed in the late 19th century around two mines located near the downtown area. Prior to the arrival of the gold miners in Juneau, the Tlingit people had established a summer village a few miles north of the Mendenhall Valley. It is believed that the Tlingit only visited the valley occasionally. In 1885, the first record of land use in the valley identifies Daniel Foster as a homesteader. He raised animals and farmed the land at the mouth of the valley (Koski and Lorenz, 1999).

In the next 40 years, development of the valley occurred rapidly. A road was built to access a hydroelectric plant constructed near the glacier. Fox and mink farms, common in this part of Alaska in the 1920s, occupied much of the flat valley land. Salmon harvested from Duck Creek fed the animals. In the mid-1900s the Juneau airport was constructed on the land where Duck Creek flowed into the ocean. The creek was diverted to empty into the Mendenhall River. Along the creek bed, gravel pits were dug and homes, schools, and commercial areas were developed (Koski and Lorenz, 1999).

In the 1950s and 1960s the current Nancy Street wetland including land to the north and south of the site were dug for gravel extraction to support the rapid development of the city. After the mining was completed, the holes were left to fill with water. The pond then supported a stump dump and the neighborhood dumping of yard waste and many other household items. A private owner of the Nancy Street site sold the land to the City and Borough of Juneau to be used as a fill disposal site and reclaimed wetland. The northern portion of the site is still owned by the Church of the Nazarene

Photo from Koski and Lorenz, 1999.  
Duck Creek, early 1900s



who has agreed to allow city access to the wetland for the reclamation project. From this early industrial history of the landscape, the only visible remnants are piles of gravel mining waste along the southern end of the Nancy Street Pond.

Currently, the Nancy Street Wetland is surrounded by dense suburban development with supporting infrastructure such as roads, schools, churches, and a commercial center. According to a study done by the Department of Parks and Recreation



Photo taken by Michele Elfers.

Nancy Street Pond 2005, prior to reclamation, Thunder Mountain is seen on the right

in Juneau, 11,000 people live in the East Mendenhall Valley with a higher than average density of 5 to 18 residential units per acre (1996). Immediately surrounding the Nancy Street Wetland is a church to the north, single family home developments to the east and south, and the collector road through the valley to the west that separates the wetland from a mobile home community. The dense development limits access to off street recreation for residents. It is difficult to move through this part of the valley without crossing streets or private property.

The Nancy Street Wetland site is seven acres of wetlands and uplands located on the East Fork of Duck Creek in the Mendenhall Valley in Juneau, Alaska. The East Fork drains 266 acres of land into the mainstem of Duck Creek. The entire Duck Creek Watershed drains 1.7 square miles of land into the Mendenhall River just upstream of the largest tidal wetland in Southeast Alaska. As part of this larger system, the water quality and habitat resources of this stream are vitally important to the ecosystem of Southeast Alaska. The Duck Creek Watershed has been recognized for its valuable habitat for salmon and its poor water quality. It is classified by the state as anadromous fish waters (Alaska Department of Fish and Game Catalog No. 111-50- 10500-2002) for its run of coho salmon. It is also designated an impaired water body by the Alaska 303(d) list of Impaired Waters, Alaska Department of Environmental Conservation. These two factors have motivated the city of Juneau and federal agencies to focus on the improvement of the stream system.

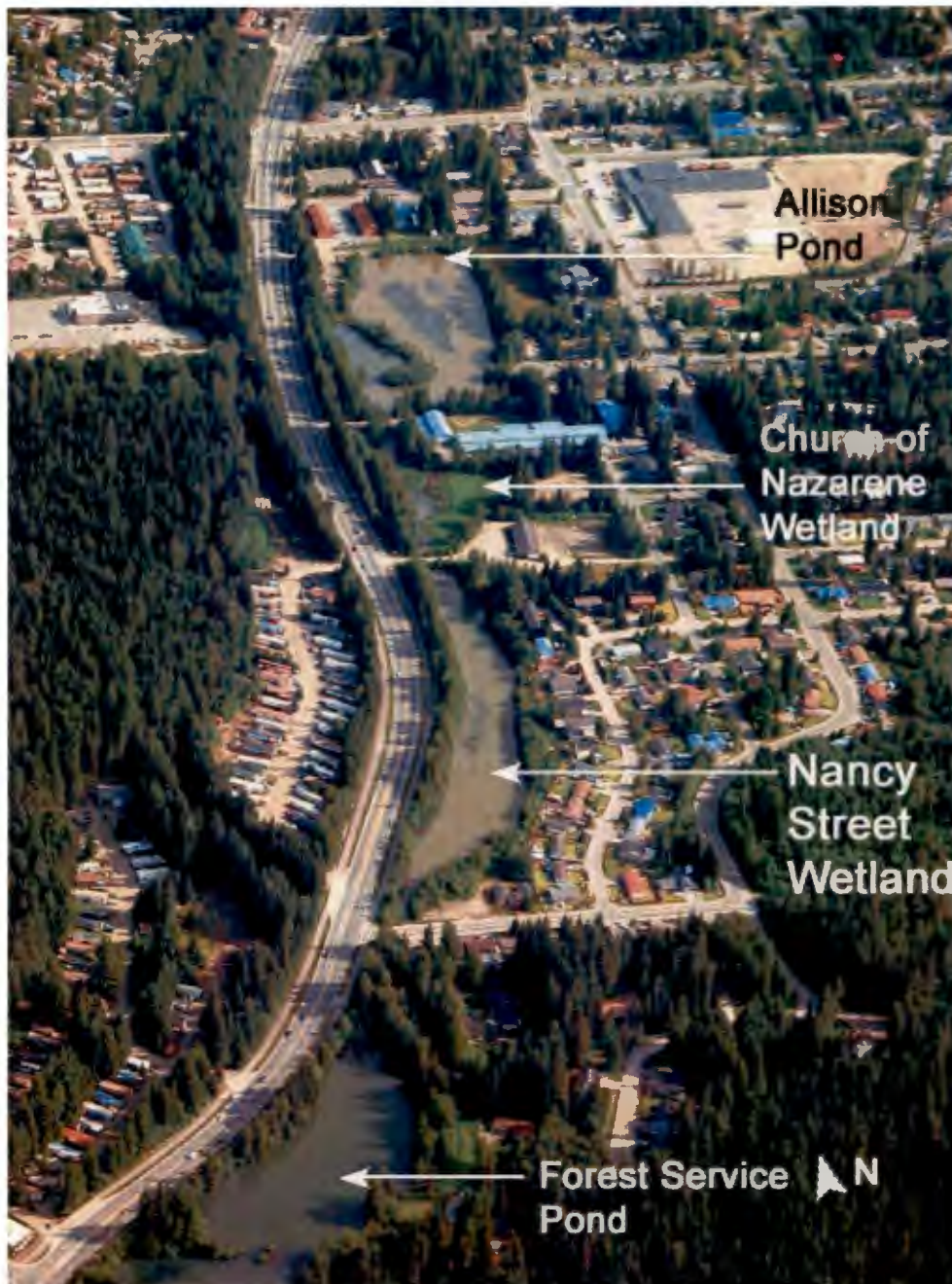


Photo from Koski and Lorenz, 1999.

The East Fork of Duck Creek flows through a chain of ponds and wetlands that were once gravel mines. Currently dense development crowds the ponds and wetlands into a narrow corridor along the main commuter road through the Mendenhall Valley.





Throughout its 250 year history as a watershed, the topography, stream flow and vegetation have massively changed due to glacial rebound, glacial succession and human influence. In its current state, the densely populated residential areas surrounding the wetland contribute to problems of turbidity, heavy metals, iron floc, fecal coliform and low dissolved oxygen rates within the watershed (Koski and Lorenz, 1999). However, many of the current water quality problems result from the geologic and cultural history within the Mendenhall Valley.

The known geologic history began during the Pleistocene Era 18,000 years ago. Metamorphosed igneous and sedimentary rock composed the Mesozoic bedrock under what is now the Mendenhall Valley. Glaciers advanced and covered the land with 4000-5000 feet of ice. When the glacier retreated, it carved out the depression that is now called the Mendenhall Valley. The glacial moraine deposited marine sediments, sand, gravel and organic materials in the valley. The most recent glacial advance in this valley began 700 years ago during the Wisconsin Age. The glacier advanced until 1750, and covered at least half of the current Duck Creek watershed. As the glacier retreated, Duck Creek gushed from the face and created an outwash plain as it flowed to the ocean. Several terminal moraines were deposited throughout the current watershed. As the glacier continued to melt, however, it formed a basin and a lake. The melt water from the glacier filled what is now Mendenhall Lake and spilled out into the Mendenhall River, cutting off the flow to Duck Creek. Today, groundwater is the primary source of the Duck Creek stream flow.

Since the retreat of the glacier, isostatic rebound has significantly impacted the landscape. In 1965, Hicks and Shofnos reported the rates of .05 feet/year uplift of land between 1936 and 1962. They believed the deglaciation of the land caused this uplift. The water table lowered relative to the surface of the land as a result of this process. Currently, low stream flow levels pose problems for fish habitat in Duck Creek. There is speculation that the isostatic rebound may contribute to this problem (Host and Neal, 2004).

In addition to isostatic rebound, the highly permeable soils in this area contribute to low flow. The soils characteristics of this flat landscape are common to alluvial plains and stream valleys: well to excessively well draining. The USDA, Soil Conservation Service, surveyed the soils in 1974 in the Juneau area and found along Duck Creek primarily soils in the He and Be series.

The He series of soils are composed of silty and sandy sediments that are generally waterlaid. For this reason, the soil is stratified. The stratification is generally 40 inches to 6 feet deep and is composed of silt, very fine sand, fine sand, deposits of organic matter, and coarse sand and pebbles. The depth to water table is usually greater than 4 feet, but can be less at times. HeA is the specific soil type in this series found along Duck Creek; this signifies slopes of 0 to 3 percent and a texture of Fine Sandy Loam.

The second series found in the Duck Creek watershed, the Be series, is also common on alluvial plains and terraces as well as hilly moraine landscapes. The gravelly sandy soils indicate an excessively well drained substrate. The first layer of the soil is very gravelly sand. The material 10 inches below the surface is 50 to 75 percent gravel and cobblestone by volume. Some large stones and boulders will be present. The water table, like the He series, is greater than 4 feet, but in some areas may be close to the surface. Flooding is rare in these soils; however, close to streams flooding may occur (Schoephorster and Furbush, 1974). Field testing close to the Nancy Street Wetland revealed a layer of approximately twenty inches of fine silt underlain by five feet of sand (Beilharz, 1998). This type of soil is highly permeable and contributes to the loss of stream flow to groundwater. In some reaches of Duck Creek, the stream goes dry or becomes puddles of standing water. Low flow destroys aquatic habitat and prevents aquatic life from moving through the stream.

The geologic conditions that create low flow in Duck Creek are compounded by the suburban land use within the watershed. The upper reaches of the stream flow through residential neighborhoods of primarily single family houses, while the lower sections abut commercial centers and the Juneau airport. According to studies done in the 1980s and 1990s, residential land use covers 540 acres of the watershed, commercial/industrial uses cover 282 acres, transportation 83 acres, and recreation/wetland cover 175 acres (TMDL, 2000). In 1969, the watershed was mapped to be 3.42 square miles. In 1988, it was estimated at 1.7 square miles. Riparian buffers and wetland areas have decreased as a result of the development (Koski and Lorenz, 1999). There is speculation that the moving of stream segments as a result of development may have moved the stream onto more permeable substrates. Stream flow is lost to groundwater when this occurs.

The water quality problems of turbidity, heavy metals, fecal coliform and low dissolved oxygen rates within the watershed in Duck Creek are largely caused by the suburbanization of the valley. Approximately 36 percent of the land cover is impervious surface and in 1997, there were a total of 39 road crossings over the creek. Stormwater runoff from the

impervious surface carries sediment, metals, oils and fluids from vehicles, and de-icing agents into the creek (Koski and Lorenz, 1999).

Within the Nancy Street Wetland, one of the most detrimental results of the gravel extraction is the increase in groundwater that is high in iron content seeping into the Nancy Street Pond and the other ponds along Duck Creek. Iron is commonly found in glacial outwash plains. While underground, it remains in a soluble form of Fe(II) because of the lack of oxygen in groundwater. When groundwater carries the iron to the surface, iron oxidizing bacteria are believed to oxidize the iron and create Fe(III). This oxidized form of iron is insoluble and settles on the ground surface as orange sediment known as iron floc (Megonigal, 2001). The process of conversion of Fe(II) to Fe(III) is detrimental to the Nancy Street Wetland because it robs the water of dissolved oxygen. Fish, macro invertebrates, and other animals require high levels of dissolved oxygen for survival. Additionally, the iron floc is small sediment that clogs interstitial spaces between gravel on the floor of the stream and prevents salmon eggs from accessing the oxygen and water flow they need to develop.

Wetland vegetation promotes the conversion of Fe(II) to Fe(III) and retains the iron floc in the roots of the plants. The roots of wetland plants leak oxygen into the soil. This zone surrounding the roots that contains oxygen is called the rhizosphere. Within the rhizosphere, Fe(II) is converted to Fe(III) by oxidizing bacteria. The Fe(III) precipitates to form a solid that sticks to the plant roots, called iron plaque (Megonigal, 2001). This characteristic of wetland plants creates the iron sink in the Church of Nazarene wetland. However, there may be some problems with this strategy in the long term. Wetland plants have been found to have high root turnover rates. Root turnover is the dying off of root hairs as part of a regular cycle of plant nutrient cycling and growth. Wetland plants are estimated to have 55% of their fine roots turnover annually (Gill and Jackson, 2000). If these roots are dislodged and carried downstream, the iron plaque may also be carried downstream, thereby negating the effects of the iron sink. Additionally, iron is known to diminish the uptake by plants of other metals or organic compounds. The iron plaque covers the root hairs, reduces oxygen in the rhizosphere, and minimizes the ability of microbes to interact with chemicals excreted by root hairs. This prevents the roots from uptaking other metals or organic compounds and reduces the phytoremediative effect of wetlands. The presence of iron could negate any other degradation of pollutants (Lanza lecture, 2005).

Historically, the Duck Creek Watershed was a rich habitat for coho, chum, and pink salmon. In its current state it provides limited habitat for coho spawning and overwintering as well as some habitat for birds and waterfowl (Koski and Lorenz, 1999). The Alaska Biological Monitoring and Water Quality Assessment Program Report rated Duck Creek the lowest of all streams studied in Southeast Alaska for habitat variables in 2003. The study measured dissolved oxygen, Ph, conductivity, temperature, taxa richness and stream structure characteristics. The mean habitat assessment value for urban streams was 157 and Duck Creek scored 96. Poor quality habitat resulting from an urban watershed with high erosion and low canopy cover combined with the geologic history have degraded habitat for the fish that once used the stream system.



Iron seepage in the Nancy Street Pond

The iron itself does not seem to harm fish and wildlife. However, the conversion process of Fe(II) to Fe(III) removes dissolved oxygen from the water. The photo is taken at Nancy Street Pond in July 2005.



Photos taken by Michele Elfers.



## II. Design and Layout of Earthwork

The impetus for this partnership formed around the need for a waste disposal site for material extracted from the Mendenhall Valley high school construction project at Dimond Park. The initial design completed by Toner-Nordling Associates estimated the placement of 52,000 cubic yards of silty fill in the Nancy Street Pond. The proximity of the Nancy Street disposal site to Dimond Park ensured that this would be a cost effective fill site.

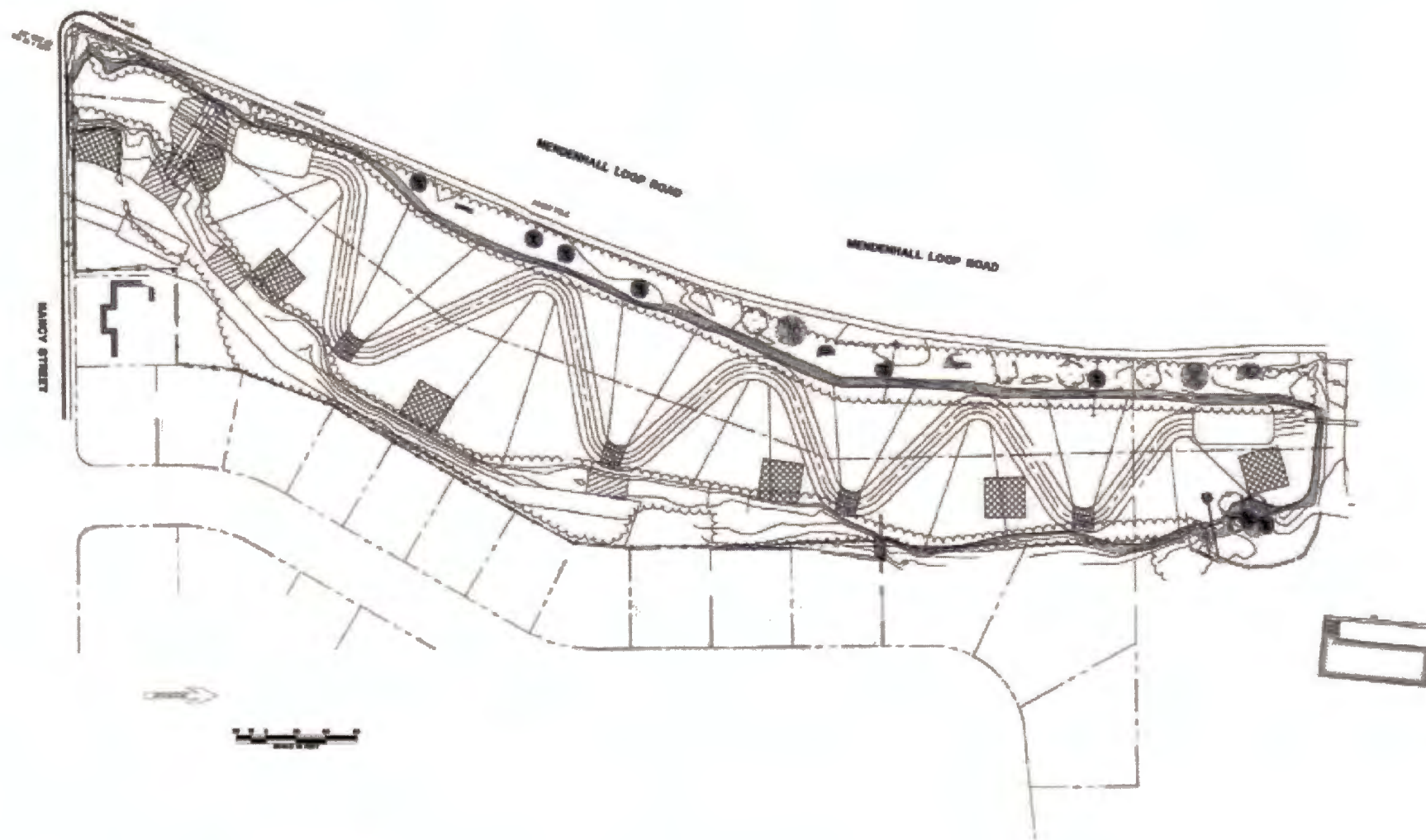
In 2004, Toner-Nordling worked with CBJ and the U.S. Fish & Wildlife Service to design the fill placement to achieve hydrologic, habitat and operational needs (See Figure 1 and 2). As part of a long-term plan to convert the upstream Allison Pond to a wetland through a similar filling process, this pond and the Church of the Nazarene water levels were designed to be controlled by an earthen dam at the southern end of the Nancy Street Wetland. The design of the Nancy Street fill and dam elevations were critical to the success of these three waterbodies. Additionally, the fill design determined habitat diversity. Low marsh and high marsh areas supported wetland emergent plants, deep water holes and the stream channel allowed for water flow and fish habitat, and the edge of the marsh maintained upland habitat. The need for efficient hauling of material required a haul road along the edge of the wetland and protruding fingers that would allow trucks access to the middle of the wetland to dump material. These access fingers became the low and high marsh habitat zones. The filling elevations below water surface elevation will be discussed in Chapter IV, Design and Layout of Vegetation.

In 2005, the design was revised by CBJ Engineering staff to enhance habitat and maximize fill placement (See Figure 3-7). As a former mining site, the extraction of gravel resulted in steep slopes at the edges of the pit. By modifying the design to increase the fill at the edges of the wetland, the slopes would be reduced to improve habitat and safety, as well as provide economic benefit through the disposal of fill. The modification reduced slopes on average from 30 to 60 percent to 7 to 15 percent throughout most of the wetland. Steep slopes were maintained where the stream channel curves at the edge of the pond to allow for overhanging vegetation that provides thermal protection for the water. The revegetation section discusses the variety of plant communities that are able to grow on the moderate slopes. The increase in fill along the slopes provided incentive for the expansion of the coho overwintering ponds by reducing the amount of fill added to these areas. The larger deep water areas benefit the juvenile coho salmon as well as providing more open water habitat for macro invertebrates.

To maintain the necessary water levels and provide a diversity of habitat, the U.S. Fish & Wildlife Service worked with R&M Engineering to design an earthen dam and outlet channel. The design of the dam called for an impermeable liner to wrap around the upstream side of the dam and fold back. The outlet stream design also included this liner to prevent water loss in the stream channel. The channel included a meander and two riffle sections for aeration. A combination of cobbles and gravel for spawning formed the streambed.

As an urban wetland, the heavy construction at the site required public meetings and compromises with adjacent property owners. The Church of Nazarene owns the northern portion of the wetland as well as the driveway needed to access the haul road (See Figure 1). To gain access to the wetland for filling, CBJ paved the Church's driveway and constructed the extension of their parking lot after construction along the northeast edge of the wetland. The property owners along the east edge of the wetland requested that the tree buffer be preserved along the Mendenhall Loop Road. For this reason, the haul road was built on the east edge of the wetland.

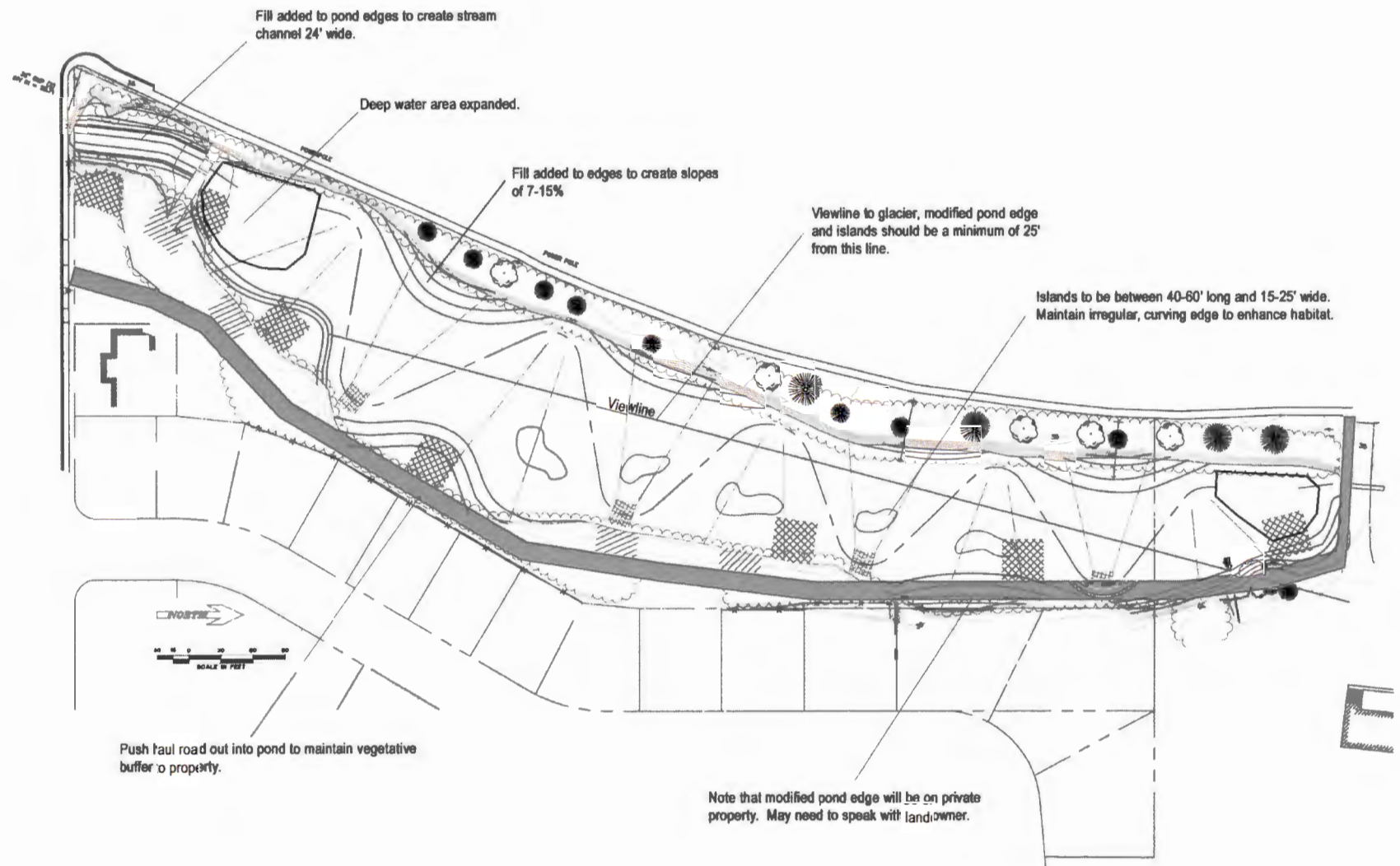




**Figure 2.** Initial Design for the Nancy Street Wetland Enhancement Project

R&M Engineering and Toner Nordling Associates worked with the U.S. Fish & Wildlife Service, the Natural Resource Conservation Service, and The Nature Conservancy to design the wetland enhancement. A meandering stream channel 4' deep flows from the North to the South through shallow marsh.





**Figure 3.** Modifications to the Nancy Street Wetland Design

In the summer of 2005, changes to the grading plan were proposed by CBJ to improve habitat by reducing the grade of the edges of the wetland. In anticipation of developing a trail plan, the islands were moved to allow for a view of the glacier.



**Figure 4.** Cross Section of the Coho Salmon Overwintering Pond

Fill is added to modify the steep wetland edge and cut is removed to allow the truck hauling road for the construction phase.



**Figure 5.** Cross Section of the Stream Channel, Marsh, and Island

Fill is added to create wetland emergent plant zones. The upland island will create protected bird nesting habitat.



**Figure 6.** Cross Section of the High marsh, Low Marsh, and Stream Channel



**Figure 7.** Cross Section of the Outlet Stream Channel  
Fill and gravel is added to create a stream channel with salmon spawning habitat.

### III. Earthmoving Process and Commentary

Based upon discussions among Glacier State, R&M Engineering, CBJ, and the U.S. Fish & Wildlife Service, the process of filling was undertaken by shaping the fingers around the stream channel without filling in the stream channel or coho overwintering ponds. The alternative, to fill the entire pond and then dig out the stream channel and deep ponds would result in much less habitat diversity and variety in landform.

Glacier State began hauling and placing fill in September, 2005 and placed 64,000 cubic yards of fill by May. Ten cubic yard capacity dump trucks were used requiring approximately 6400 trips. One excavator operator worked filling and spreading the material. The material excavated from the highschool site varied from silty, to rocky mineral soil, to sandy depending on the area of excavation. At the Nancy Street pond, the excavator operator completed the filling by section, working and finishing one finger at a time. For this reason, the type of fill varies by section. After the completion of each finger, a 6-8" lift of topsoil was added for re-vegetation purposes. The unscreened topsoil came from Stabler's Quarry and was delivered at no cost to the project as part of an EPA mitigation penalty to a local company. The topsoil quality was low in organic content and high in cobble rock and woody debris content.

At the time of filling, the dam was not constructed. The fingers were filled to approximately 1-4 inches above the summer water level. The heavy rainfall received during the summer helped to compact the fingers. Usually within two weeks of shaping a finger, it would compact and solidify enough to walk easily on it. In many areas, the rocky silty fill would compact with the rains, dry out and harden to a cement like substance.

The dam and outlet channel construction began in early July, 2006 and required approximately 1-2 weeks of work. Fill was placed through the entire area where the stream channel would be located except for a narrow channel along the west edge of the wetland. This channel maintained water flow from the wetland to the culverts. After filling the area, the stream channel was excavated according to survey markers placed by Toner-Nordling Associates. The liner was secured in place under the streambed and the cobbles placed on top of it. The dam was shaped with fill, but the liner was never folded across the upstream face of the dam. It was determined by the Glacier State Contracting, R&M Engineering, CBJ, and the U.S. Fish & Wildlife Service that the fill was stable enough to maintain its integrity. The water flow in the wetland is minimal and so erosion is not a concern.



After completion of the initial dam and outlet structures, the area was given two weeks to rest. After this period, it was observed that the liner in the stream channel was surfacing due to upwelling of air and water from the substrate. Also, the established dam elevation was determined to be high relative to the elevations of the fingers. This resulted in high water levels in the wetland emergent area which could affect plant growth.

Glacier State Contracting went back into the wetland, lowered the dam level by removing fill from under the liner, re-layed the liner, added more cobbles and gravel to settle it, and reworked the stream channel meandering form. After this second effort, the liner is less visible and the effect is much more aesthetically pleasing. Due to high precipitation levels, it is unknown if the lowering of the dam will result in lowered water surface elevation.

Early stages of filling in November, 2005.  
Logs are used to support machinery as the  
fill the fingers.

Photo taken by Neil Stichert.



Early stages of filling in November, 2005. Photo looks south at the filling of the fingers.  
Photo taken by Alan Steffert.



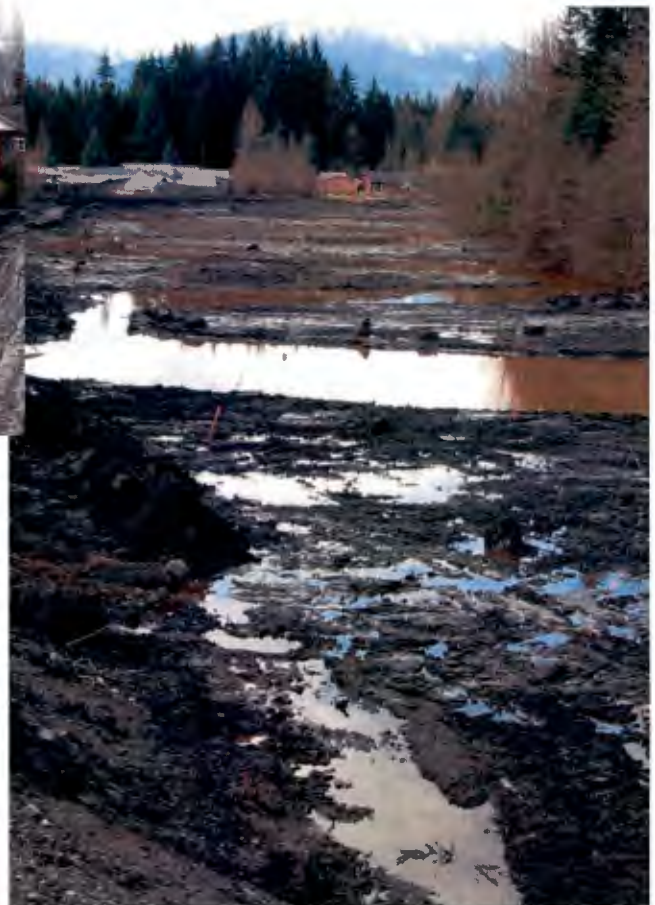
Photos taken in April, 2006 by Michele Elfers.

Hay bales and silt fence used to control sediment at downstream end of wetland.



In May, 2006 the channel sinuosity begins to take shape.

Photos taken by Michele Elfers.







Digging of outlet stream channel, laying of impermeable fabric and initial stream shaping in July 2006.



Glacier State returned to the outlet channel and dam 2 weeks after initial construction and added more cobble, lowered the dam elevation, and reshaped the channel.

Photos taken by Michele Elfers.



#### IV. Design and Layout of Vegetation

To plan for the process of revegetation, native plant communities that will thrive in the conditions at the Nancy Street Wetland must be understood. There is little to no documentation or literature on the revegetation of wetland reclamation projects in Southeast Alaska. Interviews and qualitative evaluations of three constructed wetlands during the summer of 2005 form the foundation for the planning of the revegetation process. The Church of the Nazarene Wetland, the Floyd Dryden Middle School Wetland, and Kingfisher Pond are studied to understand the successes and failures of native species and transplants within constructed wetlands. The results are applied to the planning for the revegetation of the Nancy Street Wetland.

##### 1. Church of the Nazarene (CoN) Wetland, Mendenhall Valley

The Church of the Nazarene Wetland is located immediately upstream of the Nancy Street Wetland. The two wetlands are separated by a culvert. Similar to the Nancy Street Wetland, most of the water comes from groundwater seepages which carry iron into the surface water. The soils, geologic and human use are the same for both wetlands. The Church of the Nazarene wetland was part of the gravel pit and then filled in 1997 as part of a wetland reclamation project headed by K Koski of the Duck Creek Advisory Group. The reclamation utilized 20,000 cubic yards of fill composed mostly

Church of the Nazarene Wetland

Photo taken by Michele Elfers.



of sand and gravel from a stormwater improvement project in the floodplain of Duck Creek. Approximately 1000 cubic yards of peat were placed on top of the fill in a 6-10 inch lift. To accomplish the filling and planting, the water level in the pond was lowered using pumps. The fill was then added to allow for a stream channel 2-4 feet below the water surface elevation that covered 20 percent of the wetland. The remainder of the wetland was graded to allow for three different levels: 50 percent of the wetland is high marsh at 0-3 inches below water surface elevation, 15 percent of the wetland is mid-level marsh at 0-6 inches below water surface elevation, and 15 percent of the wetland is low marsh at 6-18 inches below water surface elevation. Plants were chosen for revegetation based on the established elevations.

### **Low Marsh 6-18" water depth**

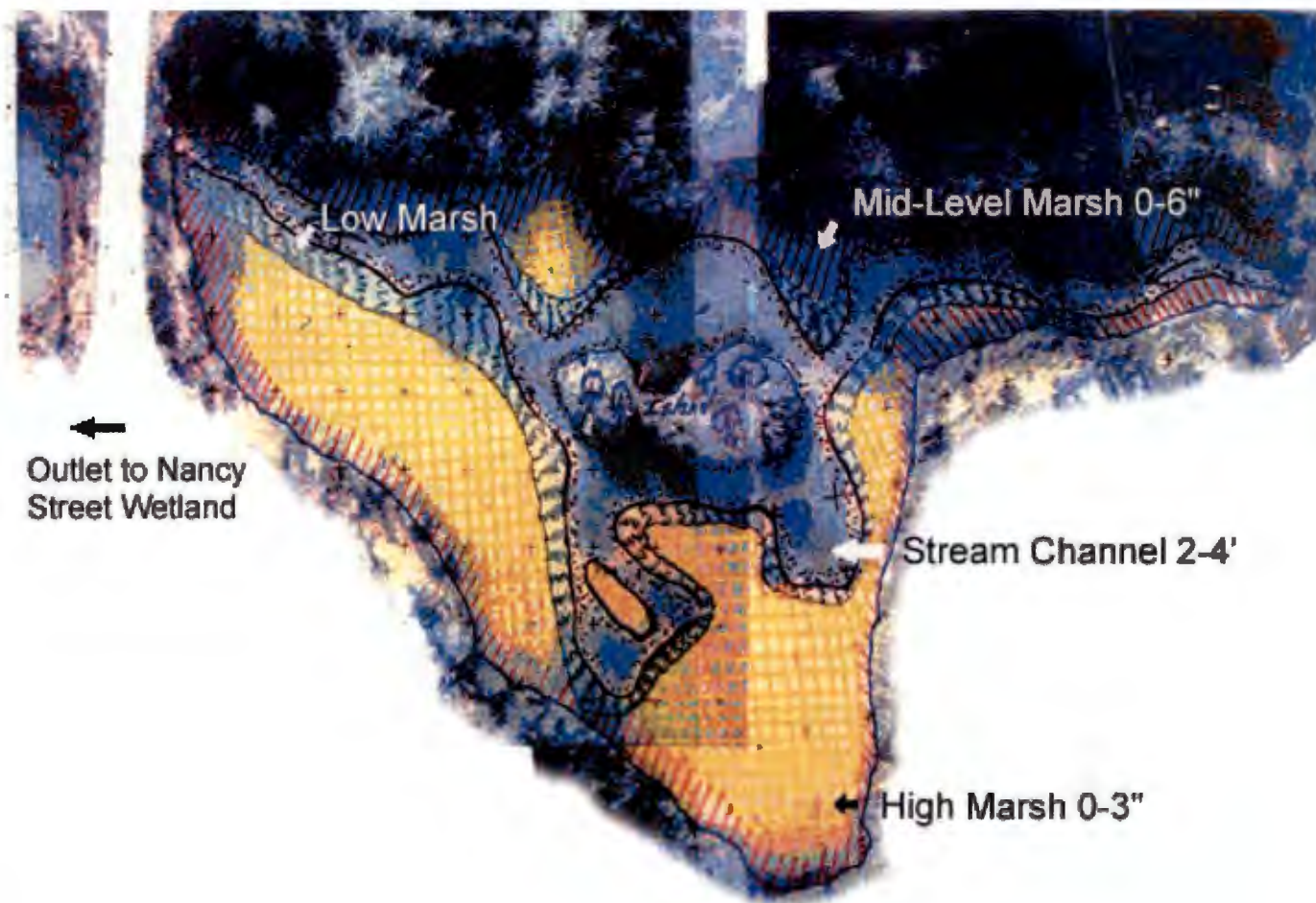
Nuphar luteum,  
*Yellow Pond Lily*  
Potamogeton gramineus,  
*Grass-Leaved Pondweed*  
Sparganium emersum,  
*Narrow-Leaved Burrweed*

### **Mid-Level Marsh 0-6" water depth**

Carex aquatilis,  
*Water sedge*  
Equisetum fluviatile,  
*Swamp Horsetail*  
Caltha palustris,  
*Yellow Marsh Marigold*  
Menyanthes trifoliata,  
*Buckbean*  
Beckmania syzigachne,  
*American Slough Grass*

### **High Marsh 0-3" water depth**

Carex aquatilis,  
*Water Sedge*  
Equisetum fluviatile,  
*Swamp Horsetail*  
Caltha palustris,  
*Yellow Marsh Marigold*  
Menyanthes trifoliata,  
*Buckbean*  
Beckmania syzigachne,  
*American Slough Grass*  
Carex sitchensis,  
*Sitka sedge*  
Calamagrostis canadensis,  
*Bluejoint Reed Grass*



**Figure 8.** Church of the Nazarene Plan  
Plan by K Koski.

The Wetland Enhancement Project for the Church of Nazarene Pond shows a grading plan that was developed to accomodate different plant communities. A meandering stream channel provides water to the marsh areas.



**Table 1.** Church of the Nazarene Plant Evaluation

site	water depth (cm)	% cover	live stems	description of quadrant	plant species
1a	7.5	90	57	saturated mud	horsetail, sitka sedge
1b	4	60	104	saturated mud	horsetail, sitka sedge
1c	3	95	14	saturated mud	horsetail, sitka sedge, blue joint grass
1d	14.5	35	17	standing water, iron oxide	horsetail, yellow marsh marigold
2a	5	75	50	saturated mud	horsetail, sitka sedge
2b	10.5	75	50	standing water	horsetail, sitka sedge
2c	6.5	35	37	saturated mud	horsetail, sitka sedge, western black willow, moss
2d	37.5	90	116	standing water, iron oxide	horsetail
3a	15	50	69	standing water	horsetail, sitka sedge, blue joint grass, bullrush
3b	35.5	95	89	standing water	horsetail, sitka sedge
3c	47.5	30	48	standing water	horsetail
3d	15.5	80	78	standing water	horsetail, sitka sedge
3e	12	20	9	standing water	sitka sedge
4a	13.5	40	90	standing water	carex, merten's sedge
4b	21.5	80	76	standing water	horsetail, sitka sedge
4c	22	40	32	standing water	horsetail

Table from "Inventory of Created Wetland and Baseline Data for Future Wetland Creation Sites". Hoferkamp, Lisa. Prepared for United States Fish and Wildlife Service, 2004-2005.



A combination of seeding, transplanting and planting of container grown stock were used for revegetation. During the transplanting, the plants that were dug from nearby wetlands were based more on availability and less on the planned species list. The plants were planted in rows four feet apart and with a spacing of two feet. Additionally, a local nursery planted upland species from container stock on a bank of the wetland (notes and plans from K Koski, 2005). Salix and Alder species were planted but did not survive. The wetland vegetation was counted and evaluated in 2004 by Lisa Hoferkamp, an assistant professor and a student at the University of Alaska, Southeast as part of a study of the water quality in the constructed wetland. Sixteen quadrants of .5 square meters were delineated within the saturated zone. Estimates of vegetative cover and an analysis of dominant species cover were performed.

The report estimates overall vegetative coverage of the wetland at 30-95 percent in 2004. This is an increase from an estimated 1 percent coverage in 1997 when it was first planted. The current plant community in the Church of Nazarene Wetland is dominated by Horsetail and Sitka Sedge with a few other species growing. According to the report by Lisa Hoferkamp, it is functioning as an iron sink and so the lack of diversity may not be a problem for this objective.

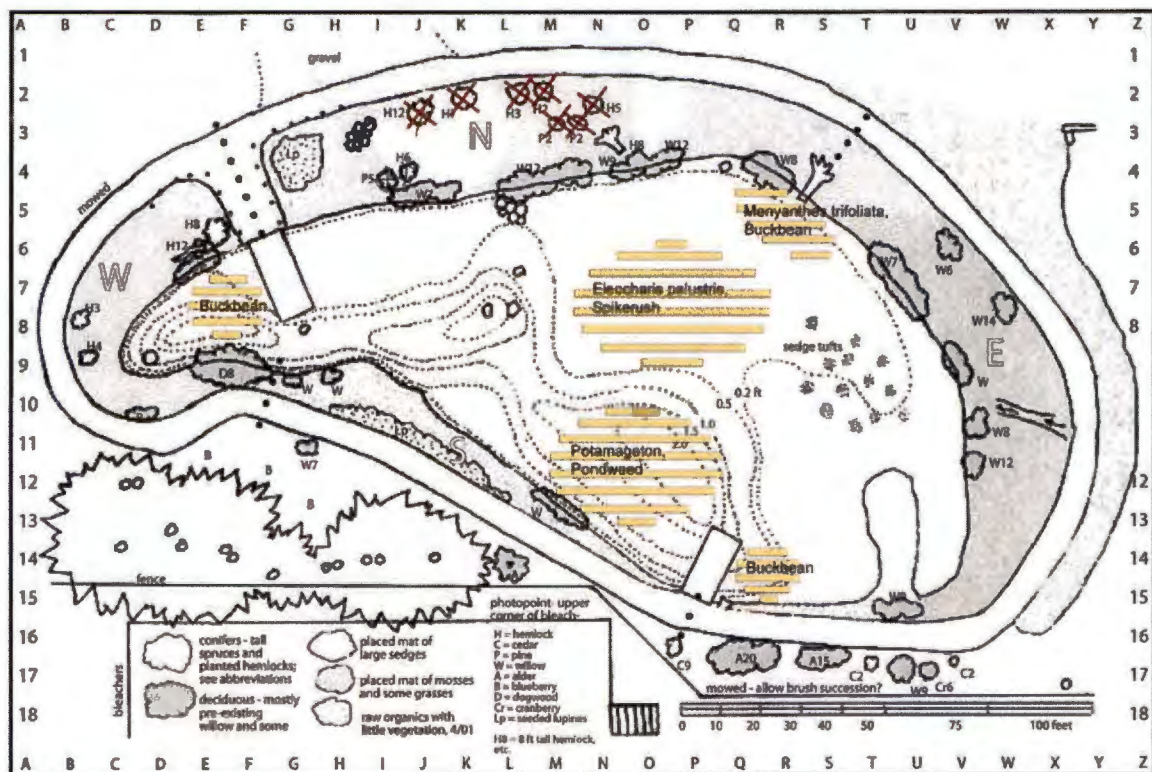
From the perspective that Nancy Street Wetland is part of ongoing experimentation and research into constructed wetlands in Southeast Alaska, expanding the diversity of the plant community may be beneficial to learn which types of plants colonize rapidly and if there are species that retain iron more efficiently. Species of Horsetail have long, thin root systems that may not be the most effective option for the trapping and retention of iron. Sedges, with dense fibrous root systems may be a better choice. Also, increasing the diversity of the plant community will allow for increased forage and habitat options for various species of birds and macro invertebrates.

## 2. Floyd Dryden Middle School Wetland, Mendenhall Valley

The Floyd Dryden Wetland is located north of the Nancy Street Wetland in the Mendenhall Valley. It occupies the post-glacial landscape but it does not have the same gravel extraction history. The constructed wetland is on school grounds and has been a wet area since the creation of the school. Surrounded by playfields and a building, it has become a detention



Photo taken by Michele Elfers.  
View of the Floyd Dryden Wetland in July 2005



**Figure 9.** Floyd Dryden Pond

Original plan from Richard Carstensen of Discovery Southeast.

Observation of major species colonization in July 2005 shows that the Hemlocks and Pines did not survive, the Sedge, Spikerush, Buckbean, and Pondweed did very well.

area for stormwater. Between 1999 and 2001 the current wetland was graded and planted. The deepest area is roughly 450 square feet at a depth of 2 feet below water surface elevation and the grade rises to approximately 2.5 inches below water surface elevation within a large area of the wetland.

Richard Carstensen of Discovery Southeast, a nature education organization in Juneau, developed a vegetation plan for the wetland. Hemlock, Cedar, Pine, Willow, Alder, Blueberry, Dogwood, Cranberry, mats of Sedges, mats of Moss and Grasses, and Lupine seeds were used for the revegetation. Observation in August of 2005 showed that within the saturated zone the plants that are thriving are species of Carex (Sedge), Equisetum (Horsetail), Eleocharis palustris (Spikerush), Menyanthes trifoliata (Buckbean), and species of Juncus (Rush). Moving out of the saturated zone into the uplands, Willows, Alders, and Dogwood are thriving. The Hemlocks and Pines are either dying or are very small plants and there are very few Lupine plants. There is little open water in the wetland and a species of Potamogeton densely covers a significant amount of surface area in the deeper water areas.



The failure of the Hemlock and Pine trees may be due to the lack of adequate soil conditions. Hemlock requires a soil with a high organic content that is rare in the recently deglaciated Mendenhall Valley. Native Pine trees only grow in peat bogs in this part of Southeast Alaska. Sedges, Spikerush and Buckbean have thrived in this wetland at water depths of 2-6 inches for the Spikerush and Sedges and 2.5 inches for the Buckbean. These species are potential candidates for the Nancy Street Wetland.

It is important to note in this wetland that the deepest water is 2 feet and that there is little open water without vegetation. Potamogeton as well as other aquatic species such as Nuphar polysepalum are able to grow in 2 feet of water. In order to diversify habitat at Nancy Street and encourage the macro invertebrate population, open water is desired and the deep water levels must be greater than 2 feet deep. A study by Nelson, Roline, et al. shows that in constructed wetlands for wastewater treatment, the most productive habitat for invertebrates is open water with oxygen producing submerged plants. The least productive habitat is open water that has a continuous cover of duckweed and low dissolved oxygen levels (2000).

### 3. Kingfisher Pond at the Juneau Police Department, Lemon Creek

Kingfisher Pond at the Juneau Police Department is located at the mouth of a glacial valley, Lemon Creek. The primary source of water is groundwater supplemented by runoff as well as a small amount of brackish tidal water that enters through a faulty control structure at the outlet of the pond. As a reclaimed gravel pit, iron seepage is a problem in this wetland as well as pre-reclamation dumping of oil and other contaminants.



Photo taken by Michele Elfers.  
View of Kingfisher Pond in July 2005

Between 2002 and 2003, the pond was filled and shaped to create a wetland and then planted with seeds, vegetative mats, and limited container stock plants. A section of the saturated zone was delineated to study the success of the seeding and the colonization of plants. The evaluation of the twelve study plots is recorded in Table 2. The evaluation is taken from observation in July 2005 of the plants growing compared to a seeding plan done at the time of revegetation. In the uplands area, Alder dominates, in some areas it is growing in dense thickets. There is also some Lupine, Dogwood, and

Highbush Cranberry in the upland areas. Both Tufted Hairgrass and Merten's Sedge have spread from saturated lowlands into well-draining upland areas. In the saturated areas to standing water, Small Leaf Bulrush, and Mare's Tail have colonized.

**Table 2.**  
Kingfisher Pond  
Plant Evaluation

Plot	Conditions	Seeded in 2000	Growing in 2005	Plot	Conditions	Seeded in 2000	Growing in 2005
1	Saturated	Merten's Rush	Merten's Rush	7	Moist ground, upslope	Hardtack Steeplebush	Merten's Sedge
			Merten's Sedge			Goat's Beard	Tufted Hairgrass
			Tufted Hairgrass				Lupine Alder
2	Saturated	Merten's Rush	Merten's Rush	8	Moist ground, upslope	Hardtack Steeplebush	Merten's Sedge
		Small Leaf Bulrush	Merten's Sedge				Tufted Hairgrass
			Tufted Hairgrass				Lupine Alder
3	Saturated	Control, no seeding	Merten's Rush	9	Moist ground, upslope	Control, no seeding	Merten's Sedge
			Merten's Sedge				Tufted Hairgrass
			Tufted Hairgrass				Lupine Alder
4	Saturated, beginning of upslope	Sawbeak Sedge	Merten's Sedge	10	Well-drained, upland	Tufted Hairgrass	Tufted Hairgrass
			Tufted Hairgrass				
5	Saturated, beginning of upslope	Control, no seeding	Merten's Sedge	11	Well-drained, upland	Tufted Hairgrass	Tufted Hairgrass
			Tufted Hairgrass			Meadow Barley	Meadow Barley
			Sawbeak Sedge				
6	Saturated, beginning of upslope	Merten's Sedge	Merten's Sedge	12	Well-drained, upland	Control, no seeding	Lupine
		Sawbeak Sedge					Alder

Data from observation in July 2005 and a Seeding Plan provided by the U.S. Fish & Wildlife Service.



A few species did not survive and many showed only one or two plants. *Spiraea douglasii*, or Hardtack Steeplebush was seeded but not growing on the site. This plant grows in southern Southeast Alaska, but it is not native to the northern part of the region. It will grow only in certain microclimates in this area and is therefore not hardy enough for a reclamation project. Meadow Barley, although native in this area, did not colonize successfully. The seeds may not have been viable, or the ground may have been too wet for the plants. This plant will not be recommended for revegetation of Nancy Street Wetland as literature suggests it is most successful in maritime areas (Pojar and Mackinnon, 1994). Sawbeak Sedge was only found in one area and may not be hardy enough to start from seed in a reclamation project.

By documenting the evaluation of these three constructed wetlands, interviews with local naturalists experienced in reclamation and revegetation projects, and literature pertinent to Southeast Alaskan plant communities, a table was created to document the successes, failures and potential for freshwater wetland species in reclamation wetlands. (See Appendix 1).

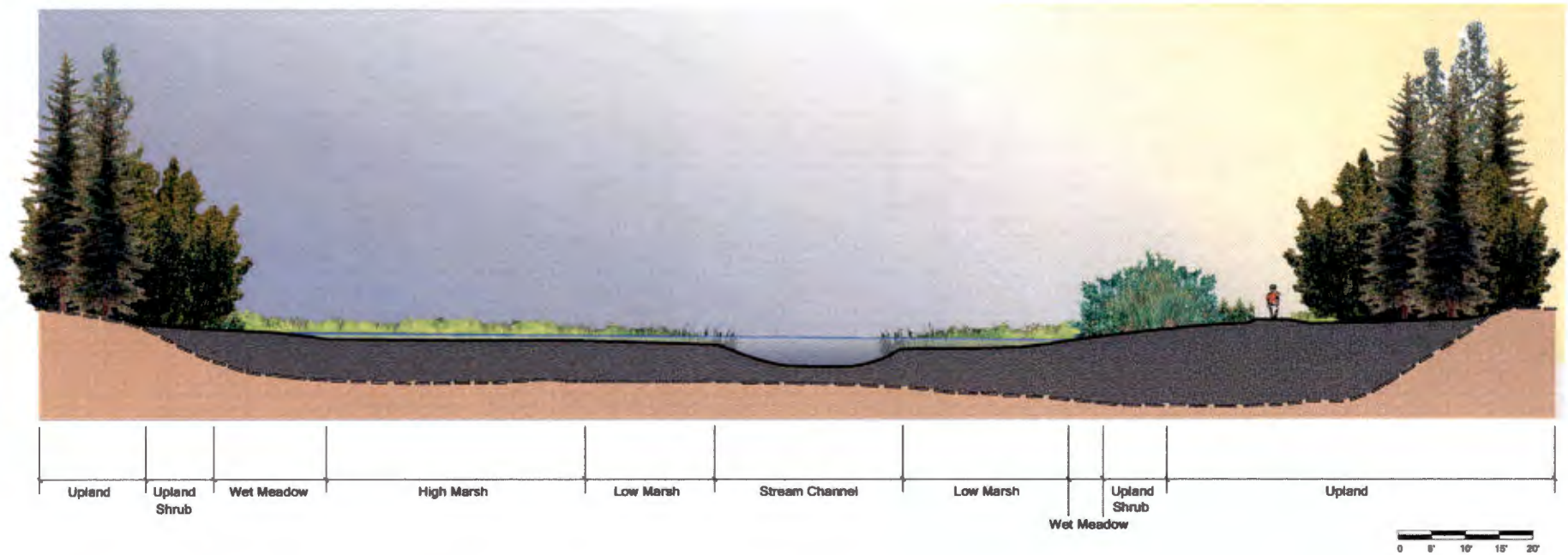
At the Nancy Street Wetland, plants have been selected based on the assessment and evaluation of their success in constructed wetlands in the region, experience of local naturalists, their ability to be transplanted or seeded, and their potential for the phytoremediation of iron. For the purpose of a planting design the plants were divided into zones based on the depth of water in which they grow. (See Table 3). The Nancy Street Wetland is designed with a water surface elevation of 28 feet. Although the Nancy Street Wetland is primarily ground water fed, runoff has been observed to affect water levels significantly in different seasons. However, the water level will fluctuate throughout the season with the rise and fall of precipitation rates. Rainfall increases between July and November and decreases between January and April. For this reason, the communities and water depths are general and meant as guidelines only. The zones are delineated on the wetland planting plan in Figures 10 and 11.

The deep water zone consists of the stream channel that flows from the inlet culvert to the outlet culvert as well as two deep pools at either end. This zone covers 55,000 square feet and is 28 percent of the total area to be revegetated. However, less than 5 percent of this area will be planted. Water will be 4 feet deep through most of this area with greater depths in each deep pool. This zone will be planted with *Potamogeton natans* (Floating Pondweed), *Sparganium angustifolium* (Narrow Leaved Burreed) , and *Nuphar polysepalum* (Yellow Pond Lily). The first two species were observed growing in the Nancy Street Pond prior to filling. Both are present upstream in the Church of the Nazarene



**Figure 10. Planting Communities**

The revegetation plan for the Nancy Street Wetland incorporates different plant communities based on elevation above the water surface. This revegetation plan was developed prior to the completion of the trail design.



**Figure 11.** Typical Planting Zone Elevation

The revegetation plan for the Nancy Street Wetland is based on the elevation of the land above or below the water surface.

Pond. *Sparganium* is known to be a local food for muskrat. *Nuphar polysepalum* is found in a nearby pond downstream of the Nancy Street Wetland.

The low marsh zone covers 30,000 square feet and comprises 15 percent of the total area to be revegetated. The land between the stream channel and the high marsh ‘fingers’ is designed to the elevation of 27 feet to 27.5 feet. The plants in this zone include *Carex sitchensis* (Sitka Sedge), *Eleocharis palustris* (Spikerush), *Juncus mertensianus* (Merten’s Rush), and *Scirpus microcarpus* (Small Leaf Bulrush). All of these plants have been successful at colonizing constructed wetlands in Juneau and can be transplanted or started by seed. *Carex sitchensis* is one of the two dominant plants in the Church of the Nazarene Wetland. The dense root system of this plant may be capable of retaining large amounts of iron.

The stream channel winds around fingers of high marsh zone areas at an elevation of 27.5 feet to 28 feet. The high marsh zone encompasses 35,000 square feet and covers 18 percent of the total area to be revegetated. *Carex sitchensis* and *Eleocharis palustris* have exhibited the ability to survive in a variety of water levels. They will transition the communities from low marsh to high marsh zones. Other plants in this zone include *Carex mertensii* (Merten’s Sedge), *Juncus effusus* (Common Rush), *Lysichiton americanum* (Skunk Cabbage), *Deschampsia cespitosa* (Tufted Hairgrass), and *Menyanthes trifoliata* (Buckbean). All of these plants have been grown successfully in the constructed wetlands in Juneau. The *Lysichiton americanum* grows throughout Juneau in shaded wetland edges or stream banks. In the early spring it ‘blooms’ with a yellow spadex that is very attractive and provides food for animals. It has been transplanted successfully by naturalists in the region.

At the edge of the standing water zones is the transition zone of wet meadow. This zone is at an elevation of 28 feet to 29 feet and will be saturated most of the time and may flood during parts of the year. The wet meadow covers 12,000 square feet and comprises 6 percent of the total area to be revegetated. Many plants that can tolerate different water levels and periodic flooding are planted here. *Carex mertensii*, *Deschampsia cespitosa* ssp. *beringensis*, and *Juncus effusus* will all do well closer to the water’s edge. Moving up through this zone, grasses and flowering plants that do well in wet meadows are planted. *Calamagrostis canadensis* (Bluejoint Reedgrass), *Festuca rubra* (Red Fescue), *Viola palustris* (Marsh Violet), *Frittilaria camschatcensis* (Chocolate Lily), *Iris setosa* (Wild Flag), *Lupinus nootkatensis* (Lupine), and *Aquilegia formosa* (Columbine) thrive in saturated soils and provide color during the summer season.



The wet meadow zone and the upland shrub zone will be indistinguishable in many areas as many of these plants thrive in saturated to moist soils. The upland shrub zone is delineated from 29 feet to 30 feet and covers 11,500 square feet. It comprises 6 percent of the total area to be revegetated. Many grasses and flowering plants including *Deschampsia cespitosa* (Tufted Hairgrass), *Calamagrostis canadensis* (Bluejoint Reedgrass), *Festuca rubra* (Red Fescue), *Aquilegia Formosa* (Columbine), and *Lupinus nootkatensis* (Lupine) will form the transition from wet meadow to upland shrub. Also in this zone will be *Cornus stolonifera* (Dogwood), *Salix barclayii* (Barclay's Willow), *Salix sitchensis* (Sitka Willow), *Alnus viridus* (Sitka Alder), *Aruncus dioicus* (Goat's Beard), *Rubus spectabilis* (Salmonberry), and *Viburnum edule* (Highbush Cranberry). The *Salix*, *Alnus*, *Aruncus* and *Viburnum* species were all observed on this site prior to filling.

Above 30 feet elevation is the well-drained upland zone. The uplands to be revegetated cover 52,500 square feet and 27 percent of the total area to be revegetated. The plants include many of the shrubs from the upland shrub zone: *Aruncus dioicus*, *Cornus stolonifera*, *Rubus spectabilis*, *Viburnum edule*, *Alnus viridus*, *Salix barclayi*, and *Salix sitchensis*. Additional trees to be planted that exist elsewhere on the site are *Populus balsamifera* (Cottonwood), *Alnus rubra* (Red Alder) and *Picea sitchensis* (Sitka Spruce). An understory of grasses and herbaceous perennials include *Festuca rubra*, *Calamagrostis canadensis* and *Aquilegia formosa*.

From this general planting zone plan in Figure 10, a detailed planting design for the uplands and upland shrub zones was created. This allows for numbers of each species needed for transplant, purchase or seeding. The design strives to create diversity in plantings to allow for habitat diversity while also considering the experience of the visitor along the trail, and the relationship of the adjacent private property owners to the wetland and the trail. For example, Detail 5 in Appendix 5 shows clusters of *Rubus spectabilis*, *Cornus stolonifera*, and *Viburnum edule*. These shrubs fruit from mid summer into fall and provide food into the winter for birds and small animals. Also, a combination of *Picea sitchensis* groupings as well as deciduous trees of *Alnus* and *Populus balsamifera* allow for varied habitat for birds. Detail 3 in Appendix 3 shows a narrow buffer between the adjacent property owners and the trail and wetland. The large cluster of *Alnus* and *Picea* is in front of homes with fencing. This choice of trees will further separate the homes from the wetland and trail.

The diverse planting communities represent the ideal revegetation plan. However, the objective of using only native plants limits the availability and spectrum of species that can be obtained and planted in the wetland. Native plant

nurseries and native seed sources do not exist in Southeast Alaska. Small amounts of native seeds are available in the area from individuals who collect seed seasonally. A few native species of grasses are sold commercially in the northern part of Alaska. The best solution to the reclamation of wetlands in Juneau is to gather wetland seed in the years prior to the reclamation of the wetland and then start them in greenhouses based on the specific needs of the plants. This process works well if the reclamation of the wetland is planned at the time of the surface mining or land disturbance. However, the circumstances of the Nancy Street Enhancement Project do not allow for the gathering and starting of seed. Therefore, transplanting of plugs will be the major source of revegetation, with some hardwood cuttings and seeding.

## V. Vegetation Process and Commentary

The planning and design of the revegetation process provided a guide for the actual implementation. However, the decision by the resource agencies to focus on transplanting of local plants to preserve local gene stock and minimize the purchase of plants largely determined the revegetation process. For a 6 acre revegetation, transplanting is feasible, but for a freshwater emergent wetland that is much larger, the limitations of transplanting may warrant a different strategy.

For the Nancy Street Wetland revegetation, the availability, accessibility, and diversity of source wetlands determined the process (See Tables 3,4). Source wetlands were selected in the Mendenhall Valley and Lemon Creek to minimize cost and driving time to Nancy Street. Additionally, only wetlands that were accessible for a crew with a vehicle were considered. The ownership of the wetlands ranged from CBJ land, U.S. Coast Guard land to private land. In all cases, permission for access and transplanting was granted. Another consideration in choosing source wetlands was the size of plant population present for the targeted species. The population had to be large enough to be able to remove a sizable quantity without decimating or affecting the source wetland population.

With all of these limitations, it was difficult to find appropriate wetlands to source plants. The majority of the Nancy Street wetland is freshwater marsh with emergent species, however in Juneau there is much more forested wetland habitat than emergent wetland. The revegetation of an emergent wetland much larger than Nancy Street would be very difficult using only transplants. The source wetlands used for Nancy Street should not be used again for at least two years and finding adequate populations of emergent species may be difficult. A potential source that exists for this type of wetland is along Department of Transportation (DOT) Right of Ways. There are many drainage ditches along Glacier Highway, particularly between Fred Meyer's and McDonald's in the Valley that are sedge and bulrush emergent wetlands. DOT utilizes SAGA crews for maintenance of Right of Ways to prune and remove shrubs and trees. An opportunity exists for a partnership to be formed with DOT where SAGA crews maintain and transplant simultaneously on future reclamation projects.

In addition to the transplanting of emergent wetland species, the revegetation included cuttings of willow and cottonwood, transplanting of berry shrubs and alder, and seeding. To accomplish these tasks, various sources of labor were used over a period of five months. Volunteers cut stakes in April and planted in June, paid SAGA workers transplanted emergent species and seeded in June and July, and paid Trail Mix workers transplanted trees and shrubs in August (See Table 4).

While the volunteers only worked for two days, their work in taking cuttings of willow, cottonwood and high bush cranberry was very important to the revegetation of the upland shrub and upland zones. Also, the involvement of community volunteers raised enthusiasm and support for the project. The volunteers were members of Full Circle Farms, a farm and distributor of organic produce in Juneau. The farm solicited volunteers through emails and donated \$5000 to the project. The cuttings were taken on April 8 with twenty volunteers. The group divided in three and went to sites near Back Loop Road. With pruners, 1000 Barclay's Willow stakes, 200 High Bush Cranberry stakes, and 75 Black Cottonwood stakes were cut. Full Circle Farms donated the use of their cold storage facility in Lemon Creek to hold the cuttings until planting. On June 7, fifteen volunteers planted the cuttings at Nancy Street. Many of the stakes were cut in half or thirds. Steel rods with mallets or sharp pointed shovels were used to plant single stakes or bouquets of 3-5 stakes. The High Bush Cranberry stakes all died in storage, however many of the willow and cottonwoods sent out roots and shoots.

For the next phase in planting, the U.S. Fish & Wildlife Service contracted a SAGA crew for 4 weeks. In 13 days, the crew worked approximately 650 labor hours. They accomplished 70% of the revegetation process by planting 3600 plugs, shrubs and small trees and seeding portions of the wetland. The crew developed efficient methods for transplanting and solved problems effectively throughout the four weeks. Each day, two workers stayed at the wetland and used an augur to dig holes in the soil for planting. The other six crew members went to the source wetland. To extract plants they found that a sharp shovel was most effective. Often they would take small mats and then cut them into plugs using a knife or sharp shovel. They suggested using a hand held shovel to cut the mats in the future. They found that bulb planters were time consuming and difficult to use in gravel or dense mud. To remove shrubs, pulaskis were the most efficient and shovels were used for trees. Despite the efficient work of the crew, the lack of proper gear and equipment at the start of the project slowed down progress. The crew needed shoulder length waterproof gloves, hip waders, rubber boots, and five gallon buckets for transporting plants. Additionally, throughout the four weeks, the augur would break down and slow progress. Better preparation and support for the crew is needed in the future.

SAGA accomplished most of the remaining revegetation work; however the grading and shaping of the outlet channel, earthen dam, and trail were not completed in time to finish the planting. Trail Mix crews transplanted alders and berry bushes into the upland and upland shrub areas and a small amount of sedges along the boardwalk and earthen dam using similar techniques as SAGA. Additionally, CBJ staff purchased and planted *Cornus stolonifera* plugs along the steep



northeast slope on the Church of the Nazarene property. These plants were purchased because of the significant benefit to the project and the lack of an appropriate population from which to take cuttings in Juneau. They grow rapidly in the Juneau climate, provide berries for birds, and control erosion with spreading rhizomes. CBJ also purchased and spread seed throughout the five month period of revegetation for erosion control and habitat enhancement.

To improve on the revegetation process for future projects, better planning for irrigation should be in place prior to transplanting. This summer in Juneau was very rainy with only a few periods of sunny dry weather. However, for two weeks in June, the sun came out and dried the high marsh area. During the revegetation period, the water level was approximately 1-3 inches below the high marsh elevation. The rocky and sandy topsoil combined with the silty fill dried in sunny conditions to form a cement like consistency. Watering was necessary to keep the plants alive during this period. SAGA crews used buckets and a garden quality gasoline powered water pump to irrigate the wetland. If the dry sunny weather persisted, these methods would not be able to keep the plants alive. To prevent this from happening on future projects a soil with a higher organic content would help to retain moisture better in dry conditions. Also, working with the Department of Public Works to obtain a permit for fire hydrant access would allow for an appropriate water source. Other strategies include the control of water levels to keep soil saturated while planting or the delay of planting until July when precipitation is more frequent.

Table 3: Recommended Plant Species

Actual Planted Species

<b>Low and High Marsh</b>		<b>Low and High Marsh</b>	
<i>Species</i>	<i>Common Name</i>	<i>Species</i>	<i>Common Name</i>
<i>Caltha palustris</i>	Marsh Marigold	<i>Caltha palustris</i>	Marsh Marigold
<i>Carex sitchensis</i>	Sitka Sedge	<i>Carex sitchensis</i>	Sitka Sedge
<i>Eleocharis palustris</i>	Spike Rush	<i>Eleocharis palustris</i>	Spike Rush
<i>Scirpus microcarpus</i>	Small Leaved Bulrush	<i>Scirpus microcarpus</i>	Small Leaved Bulrush
<i>Juncus mertensianus</i>	Merten's Rush	<i>Carex lyngbae</i>	Lyngby's Sedge
<i>Lysichiton americanum</i>	Skunk Cabbage		
<i>Menyanthes trifoliata</i>	Buckbean		
<i>Carex mertensii</i>	Merten's Sedge		
<i>Calamagrostis canadensis</i>	Blujoint Reedgrass		
<i>Deschampsia cespitosa</i>	Tufted Hairgrass		
<b>Wet Meadow</b>		<b>Wet Meadow</b>	
<i>Aquilegia formosa</i>	Western Columbine	<i>Aquilegia formosa</i>	Western Columbine
<i>Calamagrostis canadensis</i>	Bluejoint Reedgrass	<i>Calamagrostis canadensis</i>	Bluejoint Reedgrass
<i>Deschampsia cespitosa</i>	Tufted Hairgrass	<i>Deschampsia cespitosa</i>	Tufted Hairgrass
<i>Fritillaria camschatcensis</i>	Chocolate Lily	<i>Fritillaria camschatcensis</i>	Chocolate Lily
<i>Iris setosa</i>	Iris	<i>Iris setosa</i>	Iris
<i>Aconitum delphinifolium</i>	Monkshood	<i>Lupinus nootkatensis</i>	Lupine
<i>Dodecatheon pulchellum</i>	Shooting Star	<i>Hierchloe odoratum</i>	Sweet Grass
<i>Eriophorum angustifolium</i>	Cottongrass		
<i>Viola palustris</i>	Marsh Violet		
<b>Upland Shrub</b>		<b>Upland Shrub</b>	
<i>Alnus viridus</i>	Sitka Alder	<i>Alnus viridus</i>	Sitka Alder
<i>Aruncus dioicus</i>	Goat's Beard	<i>Aruncus dioicus</i>	Goat's Beard
<i>Cornus stolonifera</i>	Red Twig Dogwood	<i>Cornus stolonifera</i>	Red Twig Dogwood
<i>Rubus spectabilis</i>	Salmonberry	<i>Rubus spectabilis</i>	Salmonberry
<i>Salix barclayi</i>	Barclay's Willow	<i>Salix barclayi</i>	Barclay's Willow
<i>Salix sitchensis</i>	Sitka Willow	<i>Festuca rubra</i>	Red Fescue
<i>Viburnum edule</i>	High Bush Cranberry	<i>Rubus parviflorus</i>	Thimbleberry
		<i>Alnus rubra</i>	Red Alder
<b>Upland</b>		<b>Upland</b>	
<i>Alnus rubra</i>	Red Alder	<i>Alnus rubra</i>	Red Alder
<i>Alnus viridus</i>	Sitka Alder	<i>Alnus viridus</i>	Sitka Alder
<i>Cornus stolonifera</i>	Red Twig Dogwood	<i>Cornus stolonifera</i>	Red Twig Dogwood
<i>Picea sitchensis</i>	Sitka Spruce	<i>Picea sitchensis</i>	Sitka Spruce
<i>Populus balsamifera</i>	Black Cottonwood	<i>Populus balsamifera</i>	Black Cottonwood
<i>Rubus spectabilis</i>	Salmonberry	<i>Rubus spectabilis</i>	Salmonberry
<i>Salix barclayi</i>	Barclay's Willow	<i>Salix barclayi</i>	Barclay's Willow
<i>Salix sitchensis</i>	Sitka Sedge	<i>Rubus parviflorus</i>	Thimbleberry
<i>Viburnum edule</i>	High Bush Cranberry	<i>Festuca rubra</i>	Red Fescue



Table 4: Record of Planting Quantity, Source and Labor

Date	Species	Type	Quantity	Source	Labor
18-Apr	<i>Festuca rubra</i>	seed	10 lbs	Alaska Mill and Feed	USFWS
7-Jun	<i>Salix barclayi</i>	cutting	1500	Wren Drive/Back Loop Road	volunteer
7-Jun	<i>Populus balsamifera</i>	cutting	150	Behind Community Gardens	volunteer
13-Jun	<i>Carex lyngbae</i>	plug	130	Coast Guard Wetland	SAGA
14-Jun	<i>Carex sitchensis</i>	plug	450	Duck Creek by Superbear	SAGA
14-Jun	<i>Caltha palustris</i>	plug	40	Duck Creek by Superbear	SAGA
15-Jun	<i>Carex</i>	plug	300	Coast Guard Wetland	SAGA
15-Jun	<i>Carex sitchensis</i>	plug	375	Church of Nazarene Wetland	SAGA
15-Jun	<i>Carex sitchensis</i>	plug	200	Church of Nazarene Wetland	SAGA
19-Jun	<i>Calamagrostis/ Deschampsia</i>	plug	164	Lemon Creek Wetland	SAGA
19-Jun	<i>Fritillaria camschatensis</i>	plug	34	Lemon Creek Wetland	SAGA
19-Jun	<i>Hierchloe odoratum</i>	plug	31	Lemon Creek Wetland	SAGA
19-Jun	<i>Iris nootkatensis</i>	plug	31	Lemon Creek Wetland	SAGA
20-Jun	<i>Calamagrostis/Deschampsia</i>	plug	276	Lemon Creek Wetland	SAGA
20-Jun	<i>Fritillaria camschatensis</i>	plug	83	Lemon Creek Wetland	SAGA
20-Jun	<i>Hierchloe odoratum</i>	plug	49	Lemon Creek Wetland	SAGA
20-Jun	<i>Iris nootkatensis</i>	plug	60	Lemon Creek Wetland	SAGA
21-Jun	<i>Rubus spectabilis</i>	transplant	200	Duck Creek by Superbear	SAGA
22-Jun	<i>Carex sitchensis</i>	plug	20	Duck Creek by Superbear	SAGA
22-Jun	<i>Picea sitchensis</i>	transplant	8	DOT ROW Loop Rd	SAGA
23-Jun	<i>Lupinus nootkatensis</i>	seed	unweighed	US Forest Service, Ketchikan	NRCS
26-Jun	<i>Eleocharis palustris</i>	plug	100	Coast Guard Wetland	SAGA
26-Jun	<i>Scirpus microcarpus</i>	plug	100	Lemon Creek Wetland	SAGA
27-Jun	Thimbleberry	transplant	55	DOT land on channel by GCI	SAGA
27-Jun	<i>Rubus spectabilis</i>	transplant	35	Duck Creek by Superbear	SAGA
29-Jun	<i>Carex</i>	plug	175	DOT ROW north of SE Vet	SAGA
29-Jun	<i>Festuca rubra</i>	seed	20 lbs	Alaska Mill and Feed	SAGA
29-Jun	<i>Calamagrostis canadensis</i>	seed	10 lbs	Alaska Mill and Feed	SAGA
29-Jun	<i>Deschampsia cespitosa</i>	seed	10 lbs	Alaska Mill and Feed	SAGA
30-Jun	<i>Cornus sericea</i>	plug	216	Nat's Nursery, BC	CBJ
30-Jun	<i>Festuca rubra</i>	seed	10 lbs	Alaska Mill and Feed	CBJ
30-Jun	<i>Calamagrostis canadensis</i>	seed	10 lbs	Alaska Mill and Feed	CBJ
30-Jun	<i>Deschampsia cespitosa</i>	seed	8 lbs	Alaska Mill and Feed	CBJ
5-Jul	<i>Carex</i>	plug	490	DOT ROW north of SE Vet	SAGA
6-Jul	<i>Carex</i>	plug	245	DOT ROW north of SE Vet	SAGA
20-Jul	<i>Picea sitchensis</i>	transplant	?	DOT ROW Loop Rd	CBJ
20-Jul	<i>Festuca rubra</i>	seed	20 lbs	Alaska Mill and Feed	CBJ
20-Jul	<i>Calamagrostis canadensis</i>	seed	5 lbs	Alaska Mill and Feed	CBJ

cont. Table 4: Record of Planting Quantity, Source and Labor

Date	Species	Type	Quantity	Source	Labor
20-Jul	Deschampsia cespitosa	seed	5 lbs	Alaska Mill and Feed	CBJ
24-Jul	Cornus stolonifera	transplant	17	old Fred Meyer landscape	CBJ
26-Jul	Rubus spectabilis	transplant	24	Duck Creek by Superbear	Trail Mix
7-Aug	Carex sitchensis	plug	50	Church of Nazarene Wetland	Trail Mix
8-Aug	Alnus	transplant	100	Duck Creek by Superbear	Trail Mix
9-Aug	Rubus spectabilis	transplant	60	Duck Creek by Superbear	Trail Mix
15-Aug	Festuca rubra	seed	40 lbs	Alaska Mill and Feed	CBJ
15-Aug	Deschampsia cespitosa	seed	10 lbs	Alaska Mill and Feed	CBJ
		Total Quantity	4993		





Above: Volunteer planting of willow and cottonwood cuttings in June. Right: Cuttings send out leaves in August.



Above: SAGA extracts sedges from a wetland in Lemon Creek. Right: Transport of sedges and marsh marigold in buckets.



Above: SAGA plants wet meadow grasses.  
Right: Low marsh and high marsh sedges  
and bulrushes.



Left: Alders transplanted along  
stream channel.

Photos taken by Michele Elfers.



## VI. Trail Design and Construction

The design and development of a community trail through the wetland has become an important component to gaining public approval and support of the project. Adjacent landowners initially viewed the reclamation project as disruptive, but through the process of filling, planting and trail construction, many neighbors and community members have expressed that the reclamation is an improvement to the neighborhood. It offers recreational opportunities for a neighborhood of streets and private property and it allows access to a successional landscape with a fantastic view of the Mendenhall Glacier (See Figure 12-14).

CBJ applied for a Recreational Trails Grant through the Department of Natural Resources, Division of Parks and Outdoor Recreation. To administer the grant funds, the CBJ Engineering Department, the CBJ Department of Parks and Recreation, and Trail Mix formed a partnership to accomplish the administration, construction and management of the trail. The Engineering Department was responsible for the design, permitting and construction oversight, the Department of Parks and Recreation provided equipment, design review, and maintenance and management of the completed trail, and Trail Mix constructed the trail and administered the grant.

The trail construction began in July 2006 and continued through August. A few details will be completed in late fall and early spring such as the installation of trash cans and interpretive signage. Silty gravel forms a compact base for the six foot wide trail. A deck is sited at the south end to capture a remarkable view across the wetland of the Mendenhall Glacier. An island at the north end is accessed by a bridge and boardwalk and offers a bench and viewing point south. Eight steel pilings and a frame of treated lumber support the observation deck. The decking on the observation deck and boardwalk, railings, and benches are recycled plastic lumber. The 70' bridge is a steel gangway removed over the summer from a CBJ Ports and Harbors project.

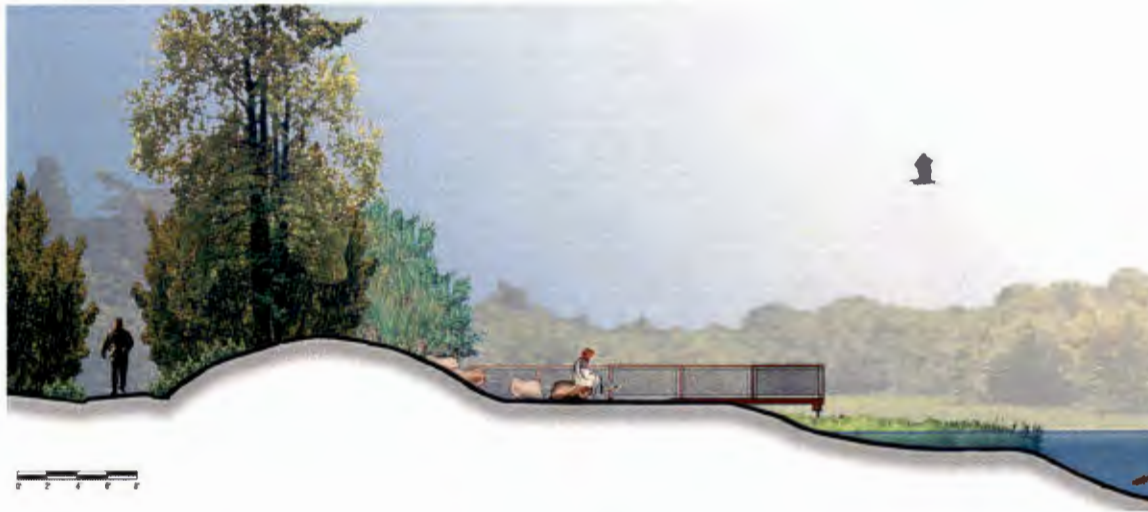
Many of the materials and labor were donated to allow completion of the trail with only grant funding. The bridge and benches were donated by CBJ Ports and Harbors, the rough grading and shot rock placement on the trail was donated by Glacier State Contractors, and the construction of the observation deck was done by the U.S. Coast Guard Engineers in Juneau.



**Figure 12. Trail Master Plan**

The trail design includes the extension north of the trail to the Church of Nazarene Wetland. This extension was not constructed. Currently, the trail connects to the Mendenhall Bike Loop Path.





**Figure 13.** Cross Section of the Observation Deck

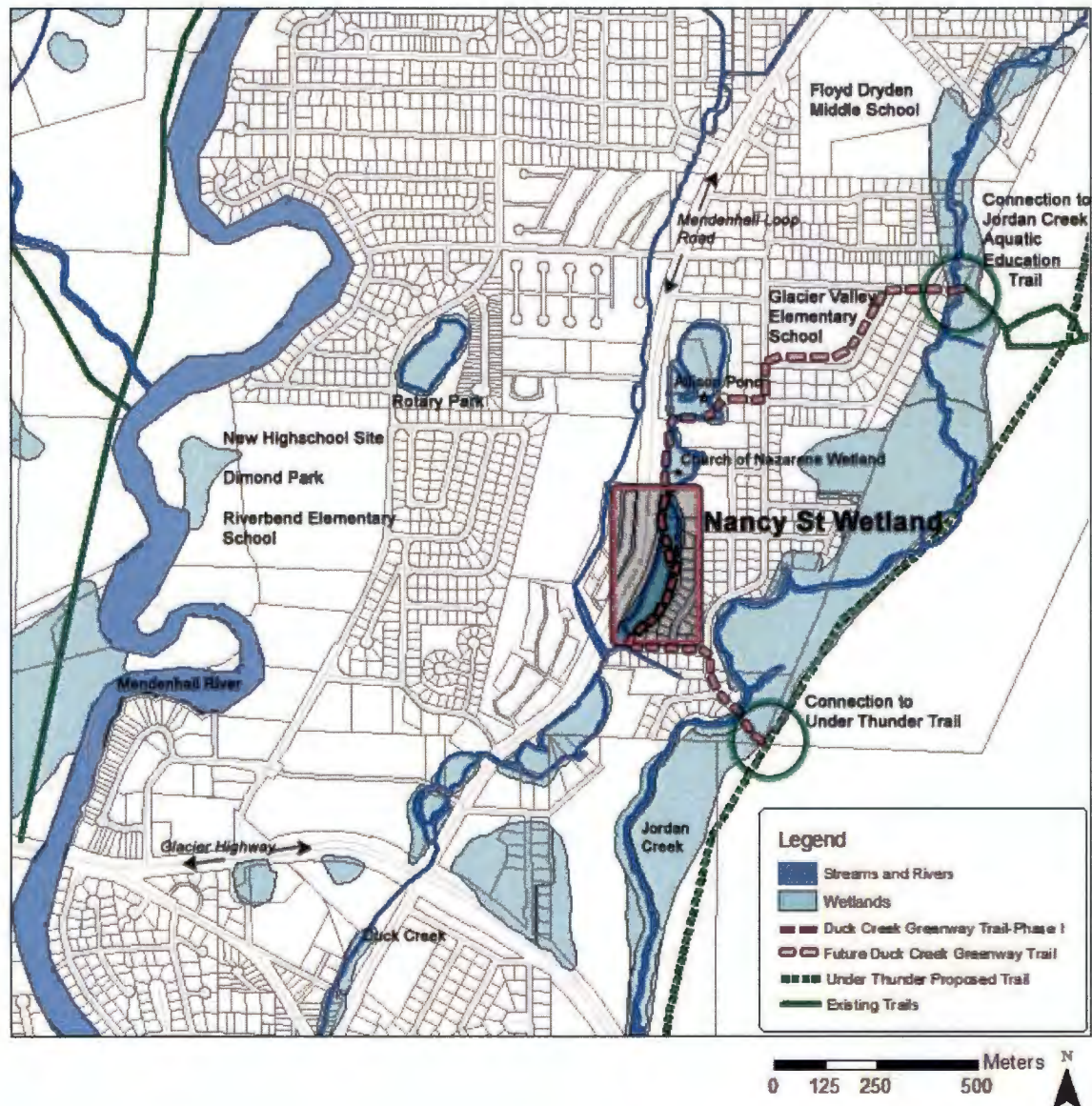
The deck is sited to allow for close viewing of open water and to capture a magnificent view of the Mendenhall Glacier as a backdrop to the wetlands.



**Figure 14.** Cross Section of the Bridges

The two bridges across the wetland are connected by an island. The first is a 25' wooden boardwalk across emergent wetlands, the second is a 70' steel bridge with metal grate decking across the stream channel. On the island, a gravel seating area with boulders allows for resting and wildlife viewing.

The constructed trail represents Phase I of the Duck Creek Greenway Trail that will extend through the Nancy Street Wetland and the upstream Church of Nazarene Wetland and the Allison Pond (See Figure 15). Ultimately, it will connect from the north and south to the Under Thunder trail to form a loop. The creation of a trail that links the three wetlands will raise awareness of the ecological connection for fish, birds and other wildlife among these stepping stone habitats.



**Figure 15.** Duck Creek Greenway Trail Master Plan.

The trail through Nancy Street will connect the three former gravel pits to provide neighborhood connections, recreational opportunities, and to increase awareness of the ecological connections among the enhanced wetlands.



Glacier State shaped the rough trail bed and placed shot rock in May.



Trail Mix hauls gravel to build the trail across the island in August.

Trail Mix drives pilings for the observation deck and shapes the gathering area.





The finished bridge and boardwalk cross the wetland to an island with a bench for viewing.

Right: The steel gangway donated by CBJ Ports and Harbors extends from the northwest end of the trail to the east side. Trail Mix built new cedar rails for safety.



Below: The finished observation deck and gathering area.





## VII. Monitoring and Maintenance

The monitoring and maintenance plan for the Nancy Street Wetland addresses issues of survival and performance of wetland vegetation, changes in wetland composition, the control of invasive species, and the general upkeep of the trail and interpretive areas. The plan for monitoring of wetland vegetation is informed by a plan for wetland monitoring in Bellevue, Washington by Herrera Environmental Consultants, a guide to “Wetland Restoration, Creation, and Enhancement” written by various federal resource agencies, and research done by Elzinga, Salzer, and Willoughby in *Measuring and Monitoring Plant Populations*. The plan for trail maintenance is based on observations of wetland trail requirements over time in Juneau.

### *Monitoring Plan*

It is proposed that this work be performed in conjunction with the existing UAS water and fish monitoring plan and the data be combined into one report.

1. Establish plots in different plant community zones to measure species composition, aerial cover, and vegetative density. Measure water level above ground surface. Take measurements once per year in late July from 2007 to 2012. See Appendix XX for plot locations.
  - a. Plot 1 Upland - monitor a 5 meter radius around stake.
  - b. Plot 2 Island – monitor the entire island.
  - c. Plot 3 Emergent – monitor a 1 meter radius around stake.
  - d. Plot 4 Emergent – monitor a 1 meter radius around stake.
2. Establish 4 photopoints that capture each plot and 2 photopoints that capture emergent wetland, one from the observation deck looking north to the glacier and the second from the bench on the island looking south to the observation. See Appendix 2b and 2c for photopoints and 2006 photographs.
3. Complete table of information and draw maps recording the location, density and cover of each plot. See Appendix 2a for baseline data and sample table.

### *Maintenance Plan*

The Nancy Street Wetland will be transferred to the CBJ Parks and Recreation Department for management. This department and Trail Mix can coordinate to maintain the trail using the excess trail grant money.

1. Prune and clear shrubs and trees obstructing passage along the trail.
2. Empty garbage cans, refill doggy bag dispenser and remove garbage from the trail.
3. Clear drainage culverts along trail.

## VIII. Conclusion

The Nancy Street Wetland Enhancement Project offers an economically feasible, ecologically beneficial, and socially supported model of wetland reclamation for municipalities. Based on the data and assessment of the design and construction presented in this report, the project has been successful in the aspects of earthwork, transplanting, cost benefit and public participation. However, areas of improvement include the refining of final water levels, soil quality, and irrigation strategies during transplanting.

The design and implementation of the filling process determined largely the improvement of habitat, the efficiency of operations, and the accuracy of the as-built site to the design. By filling and completing each finger and section of the wetland individually, greater variety and attention to each landform was introduced. The other option, filling the entire site and then returning to dredge the stream channel would have resulted in less diversity of habitat and less attention to the design details. There is some concern that the water level is higher than the designed level. However, the rainfall was higher than average in 2006, so it is difficult to tell if the water levels in the wetland will drop. Designing elevations to within 3 inches to allow for necessary habitat for plants and wildlife is very difficult on a project where over 60,000 CY of fill are being placed. For this reason, designing a dam with adjustability to account for the discrepancy in water level would improve the function and success of the project.

The high rainfall this summer maintained a moist planting substrate throughout most of the summer. In late June, a sunny period of two weeks revealed the problems that would have been encountered had it been a drier summer. The soil dried and cracked around the newly transplanted plants and a hasty irrigation plan of buckets and a garden pump with hose was used to keep the plants alive. An irrigation plan should be in place prior to the revegetation phase. Tapping into city water through fire hydrants, or a private source are two potential solutions. Also, improving the quality of topsoil will improve moisture retention. The mineral topsoil had little organic content and was full of rock and cobble. Plant survival in 2007 will reveal whether higher quality topsoil is needed. At the end of the 2006 planting season, there was approximately 70% survival rate of transplanted species. Based on this estimate, the revegetation effort was very successful.

In addition to the improvement of fish and wildlife habitat, the other measure of success of the Nancy Street Wetland Enhancement is the strong base of public support. Throughout the construction process, volunteers donated time,

materials and money to the project. Many neighbors began to come out during the summer construction and comment on how happy they were about the project.

As a result of the success of this project, a similar process is planned for the Allison Pond upstream of the Nancy Street Wetland. The process will be improved based on this assessment and applied to the Allison Pond site needs. The CBJ has saved the community money by pioneering this alternative option to fill disposal. The support of the U.S. Fish & Wildlife Service and the Natural Resource Conservation Service has enhanced habitat for fish and wildlife and reclaimed a valuable community resource.



Plant List for Freshwater Wetlands											
Scientific Name	Common Name	Recommendation by	Water Level	Height	Transplant Potential	Seed Potential	Wildlife Benefits	Human Benefits	Iron phytoremediation	Liabilities	Other Issues
<b>Deep Water</b>											
<i>Caltha natans</i>	Floating Marsh Marigold	Book	aquatic floating	1-3'				attractive flower			floats or creeps in mud, stolons root at nodes
<i>Nuphar polysepalum</i>	Yellow pond-lily	Patti Krosse, Ed Buyarski	3-4' average water depth, up to 6' stalk		successful, use fork or clam digger to dig up entire root, or monofilament tied to root with rock to get plant it.		food, habitat for fish, cover for ducklings, frog habitat	very attractive open water flower		Patti-very difficult to dig roots, often extensive, and hard to get roots back into the water completely	found in pond near Superbear, very shallow water, may be easy to remove
<i>Potamogeton natans</i>	Floating Pondweed	Observed at Nancy Street	aquatic floating from bottom 3-8'		yes		very valuable food source for mallards and other marsh birds		Existed in Nancy Street Pond so it is tolerant of iron	In CoN it forms a dense cover in open water areas, too much shade and it may limit macroinvertebrate population	present at Nancy Street Pond prior to filling, present at CoN, Floyd Dryden, becomes very dense in areas, keep deep water areas in pools if open water habitat is desired
<i>Sparganium angustifolium</i>	Narrow-Leaved Bur-reed	Observed at Nancy Street	aquatic floating	1-3'			nesting, cover, seeds, muskrats		Existed in Nancy Street Pond so it is tolerant of iron		present at Nancy Street Pond prior to filling
<b>Marsh</b>											
<i>Caltha palustris</i>	Yellow Marsh Marigold	Book	wet areas with slow running water	variable	divide rootball	seed direct sow in fall		attractive flower			limited survival at CoN
<i>Carex mertensii</i>	Mertens's Sedge	Patti Krosse	upland, more dry conditions, in transition zone	4'	one of the easiest types of carex to transplant	yes		attractive colorful, large spikes	dense root system may hold more iron	Carex more difficult to dig roots	germinates easily, some found in CoN, planted in Kingfisher Pond, growing very well in low saturated soil, but also growing on wet slopes.
<i>Carex sitchensis</i>	Sitka Sedge	Observed at CoN Wetland	emergent	1-5'	yes	yes	excellent waterfowl habitat		dense root system may hold more iron	hard to dig up because of root system	transplanted into CoN, excellent survival rate
<i>Carex stipata</i>	Sawbeak Sedge	Observed at Kingfisher Pond	marsh and bog	1-3'		yes		attractive seed head	dense root system may hold more iron		planted in Kingfisher Pond (seed), found only a few plants, did not do well
<i>Eleocharis palustris</i>	Spike Rush	Observed at Floyd Dryden Wetland	in shallow standing water, 1-2"	8-24"				attractive head			spread very well in Floyd Dryden Pond and has an attractive head and reddish hue to the stems
<i>Equisetum</i>	Horsetail sp.	Patti Krosse	aquatic to semi-aquatic		yes				the roots are small and probably do not trap much iron, roots do not hold much soil	Has shown invasive tendencies in the CoN wetland	probably easy to transplant some rhizomes, excellent survival rate in CoN( dominates wetland-maybe too aggressive), also abundant in Floyd Dryden
<i>Hordeum brachyantherum</i>	Meadow Barley	Observed at Kingfisher Pond	moist soils	3'		yes	food for blacktail deer			Primarily a maritime species, along beaches and meadows	planted in Kingfisher Pond (seed), found only one plant

Scientific Name	Common Name	Recommendation by	Water Level	Height	Transplant Potential	Seed Potential	Wildlife Benefits	Human Benefits	Iron phytoremediation	Liabilities	Other Issues
Juncus effusus	Common Rush	Patti Krosse	some water-a little drier, gravelly disturbed land	1-4'	Difficult	yes		less attractive, smaller			germinates easily
Juncus mertensianus	Merten's Rush	Observed at Kingfisher Pond	marsh and bog	1'		yes		attractive seed head			planted in Kingfisher Pond (seed), growing in saturated soil
Lysichiton americanum	Skunk Cabbage	Observed at CoN, Ed Buyarski	wet edges of water	1-4'	thick root, need to get down deep to dig it out	yes, direct sow in fall	food for deer, bear, and gnats	attractive flower, color		Shady, forested areas	present at edges of CoN
Menyanthes trifoliata	Buckbean	Patti Krosse	aquatic to semi-aquatic	1'	easy to dig up but difficult to establish in soil	yes	fruit is food for flies, beetles, bees, and birds	attractive flower		rhizomes	planted in past with water around it at all times, creeping rhizomes should be separated in fall or early spring. Transplanted into Floyd Dryden wetland, has spread and is doing well there
Scirpus Microcarpus	Small-Leaf Bulrush	Patti Krosse, Dave Maddix	water with a gradient	4'	very easy to dig roots and transplant successfully	yes	nesting, cover, seeds	attractive seed heads, medium height	root uptake potential		some bulrush present in CoN, believed to be this type, planted in Kingfisher Pond. It is doing very well and has spread
<b>Wet Meadow</b>											
Aconitum delphinifolium	Monkshood	Book	wet meadow, streambanks	3'				attractive flowers		poisonous	needs the drier upslope of wet meadow, often found at higher elevations
Aquilegia formosa	Columbine	Ed Buyarski	wet meadow, streambanks, often in rocky areas	2'	yes	yes	food for hummingbirds, cover for nesting species	attractive flower			prefers drier areas, well-drained, Ed Buyarski says seeding works very well
Calamagrostis canadensis	Bluejoint Reedgrass	Book, Dave Maddix	wet meadows and well-drained uplands	3'	yes with sprigs	limited, grassrolis or sprigging plugs	bird seed, nesting, cover for small mammals		dense fibrous root system, slightly rhizomatous		forms overhanging banks, aggressive colonizer in disturbed areas
Deschampsia cespitosa ssp. beringensis	Tufted Hairgrass	Book	moist soils	1-4'		yes, but high demand	low to moderate fishery and habitat value			Must be careful with seed, none being collected in SE AK. DNA issues with new varieties.	adaptable to many conditions, tufted growth form, seeded in Kingfisher Pond did well from low saturated locations moving up on wet slopes
Dodecatheon pulchellum	Shooting Star	Patti Krosse, Ed Buyarski	moist soil but not standing water	1-1.5'	very easy	difficult, needs to be wet and cold through winter		attractive flower			challenging to start from seed



Scientific Name	Common Name	Recommendation by	Water Level	Height	Transplant Potential	Seed Potential	Wildlife Benefits	Human Benefits	Iron phytoremediation	Liabilities	Other Issues
Eriophorum angustifolium	Narrow-Leaved Cotton Grass	Book	wet, moist soil	2'				attractive seed head		rhizomes	
Festuca rubra	Red Fescue	Book	moist to well-drained	6"-40"		yes	low habitat and fishery value	reddish hue			very common in Alaska in low elevation meadows and mountain meadows, easy to seed, used for agriculture, horticulture, lawns, tolerates flooding
Fritillaria camschatcensis	Chocolate Lily	Patti Krosse	moist soil but not standing water	2.5'	Patti Krosse says it is very easy, and they take well (bulb form)			attractive flower			
Iris Setosa	Wild Flag	Book	moist soil	1-3'	easy			attractive flowers			Rhizomes can be divided and gathered in spring or in fall in mild areas
Lupinus nootkatensis	Nootka Lupine	Ed Buyarski	moist soils	2-3'	very difficult to transplant because of extensive root system	yes-gather in pods, dry out pods so they pop and capture the seeds	food for hummingbirds, cover for nesting species	attractive flowers		Needs mineral soil, likes gravel, well-drained	Fixes nitrogen, volunteered at Kingfisher Pond, seeded areas at Floyd Dryden did not take well, only a few plants
Rubus spectabilis	Salmonberry	Book	wet areas	3-9'	dig up rhizomes with many root off shoots, fairly easy		berries good for food	attractive flowers and berries, good screening		attracts bear	
Valeriana sitchensis	Sitka Valerian	Book	moist soil	1-3'				attractive flowers			
Viola palustris	Marsh Violet	Ed Buyarski	saturated soils	low	yes, easy			attractive flowers			
<b>Tree/Shrub</b>											
Acer glabrum	Douglas Maple		floodplain, moist, into uplands	30'	Seed, transplant, softwood cutting	yes	birds eat seeds, cover	attractive fall foliage, yellow-crimson		found mostly in Juneau on rocky coast	
Alnus rubra	Red Alder	Book	wet soils	75'	Hedge layer, transplant, seed, hardwood cutting	yes	food, cover				nitrogen fixing, good on steep slopes
Alnus viridus (Alnus sinuata)	Sitka Alder	Book	wet soils	18'	Hedge layer, transplant, seed, hardwood cutting	yes	food, cover				nitrogen fixing, longpointed teeth of two sizes
Aruncus dioicus	Goat's Beard	Observed at Kingfisher Pond	wet soils to dry uplands	3-6'	yes	yes					Planted in Kingfisher Pond (seed), no mature plants found

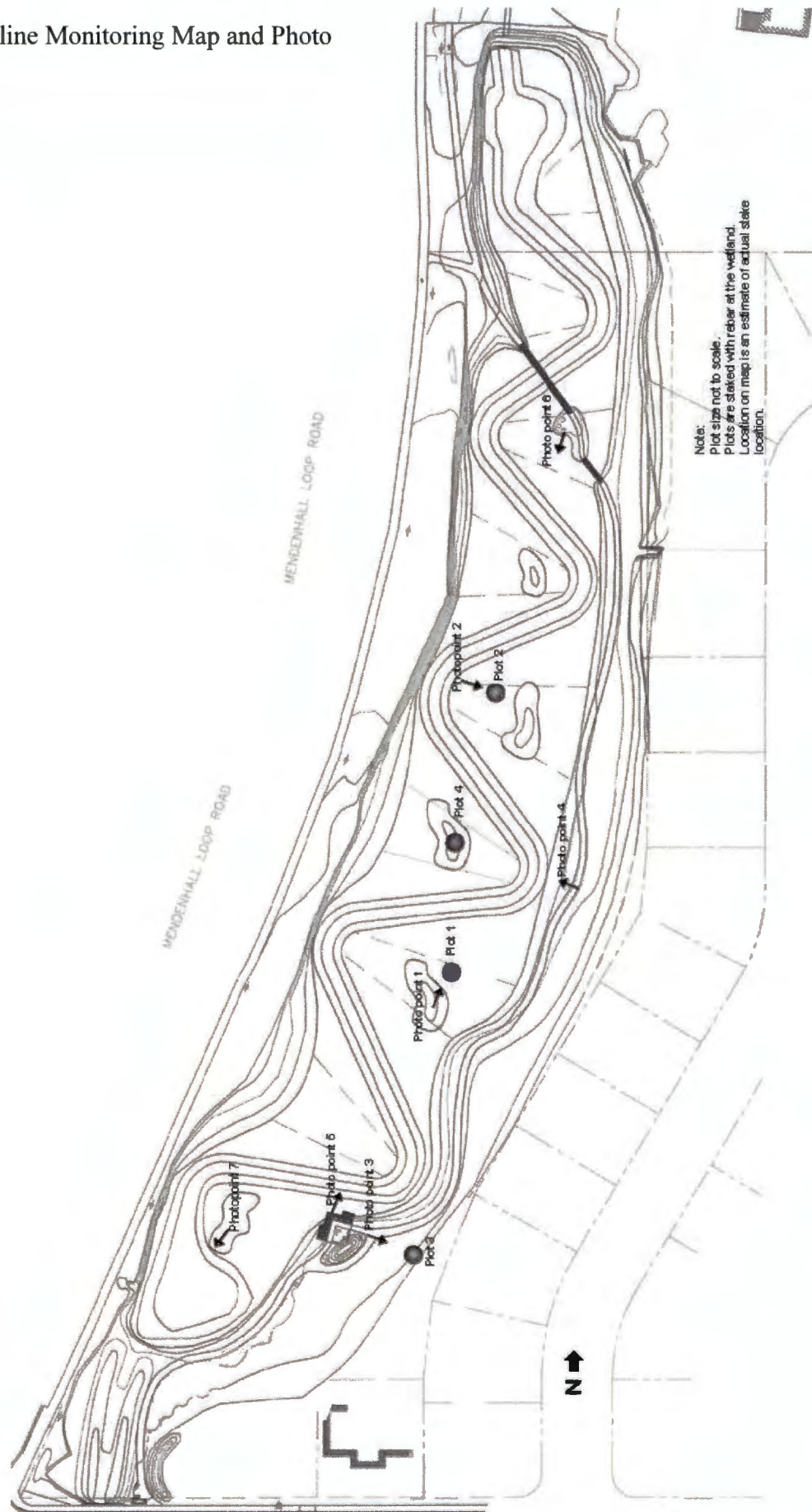
Scientific Name	Common Name	Recommendation by	Water Level	Height	Transplant Potential	Seed Potential	Wildlife Benefits	Human Benefits	Iron phytoremediation	Liabilities	Other Issues
<i>Cornus stolonifera</i>	Red Osier Dogwood	Book	moist soils	3-18'	dormant cutting, live stakes, bundles, brush layer, hedge layering, rooted cuttings, transplants, seed	yes	berries provide winter food for deer	attractive white flowers, berries, and red twigs			2-4 specimens planted in Kingfisher Pond, looks like the original shoots died, but root base survived and is sending up new shoots.
<i>Picea sitchensis</i>	Sitka Spruce	Book	wet soils to dry uplands	200'	transplant, seed	yes	birds eat seed, habitat, winter nesting	evergreen, good screen			
<i>Populus balsamifera</i>	Black Cottonwood	Book	water edge	150'	dormant cuttings, live stakes, bundles, brush layer, hedge layering, rooted cuttings, transplants, seed	yes	birds eat seed, habitat				
<i>Salix barclayi</i>	Barclay's Willow	Ellen Anderson	water edge	6-8'		yes	habitat				often has 'willow roses' at end of twigs from deformed leaves and insects
<i>Salix sitchensis</i>	Sitka Willow	Book	water edge	3-24'	dormant cutting, live stakes, bundles, brush layer, live stiltation, hedge layering, rooted cuttings, transplants, seed	yes	habitat				
<i>Spirea douglasii</i>	Hardhack Steeplebush	Observed at Kingfisher Pond	wet soils							Juneau is north of its zone	Seeded in Kingfisher Pond, no plants found.
<i>Tsuga heterophylla</i>	Western Hemlock		wet soils	180'	transplant, seed	yes	habitat	evergreen, good screen			needs significant organic content on site to grow, does not do well in recently deglaciated areas, shade tolerant
<i>Viburnum edule</i>	Highbush Cranberry	Observed at Nancy Street in uplands	wet soils and streambanks to dry uplands	5-8'	cuttings possible		berries	attractive and edible berries			Ed Buyarski says its easy to take cuttings, similar to willow
<b>Sources:</b>											
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## October 2006

[illegible]

**Appendix 2b.** Baseline Monitoring Map and Photo Point Locations





**Appendix 2c. Photo points**  
October 2006



Photo point 1



Photo point 2



Photo point 3

Photo point 4



Photo point 5





Photo point 6



Photo point 7



### Appendix 3A. Budget - CBJ Cost Benefit for New High School Project

<b>Option 1: Typical Cost for Filling at Lemon Creek</b>					
	<b>Price</b>	<b>per Unit</b>	<b>Quantity</b>	<b>Unit</b>	<b>Cost</b>
<b><i>Filling Lemon Creek 52,000 cy</i></b>					
tipping fee	\$2.50	cy	52,000	cy	\$130,000
trucking fee	\$68	load (8 cy)	6,500	loads	\$442,000
				<b>Total Cost for Lemon Creek Filling</b>	<b>\$572,000</b>
<b>Option 2: Nancy Street Wetland Filling</b>					
	<b>Price</b>	<b>per Unit</b>	<b>Quantity</b>	<b>Unit</b>	<b>Cost</b>
<b><i>Filling Nancy Street 52,000 cy</i></b>					
tipping fee	\$1	cy	52,000	cy	\$52,000
trucking fee	\$20	load (8 cy)	6,500	loads	\$130,000
				<b>Total Cost for Nancy Street Filling</b>	<b>\$182,000</b>
				Total Cost for Lemon Creek Filling	\$572,000
				Total Cost for Nancy Street Filling	-\$182,000
				CBJ cost of land purchase of Nancy Street Wetland	-\$137,000
				<b>Savings for CBJ after land purchase</b>	<b>\$253,000</b>

The City and Borough of Juneau saved \$253,000 by purchasing, filling and enhancing the Nancy Street Wetland instead of following the following the typical process of fill disposal at Lemon Creek. The reasons for the savings include:

1. The distance from the construction site to the Nancy Street Wetland is approximately 3 miles shorter than the distance to the Lemon Creek disposal site. This reduces fuel and transportation costs.
2. The CBJ owned the disposal property and could reduce the tipping fees considerably, thereby saving the project money.
3. The process of enhancing the Nancy Street Wetland was funded entirely by the U.S. Fish & Wildlife Service, the Natural Resource Conservation Service, and other grants and donations. The involvement of the resource agencies at all stages of planning, design and construction facilitated the filling and enhancement process. See Appendix 3B for contribution details.



### Appendix 3B. Budget - Contributions

	Entity	Program	Task	Amount
<b>1.</b>	<b>Land Purchase</b>			
	CBJ	Street Sales Tax	Land Purchase	\$137,000
			<b>Total</b>	<b>\$137,000</b>
<b>2.</b>	<b>Earthwork</b>			
	USFWS	Partners for Fish and Wildlife Program	Intern	\$9,000
			Earthwork	\$31,000
	NRCS	Wildlife Habitat Improvement Program	Fill placement and rough grading	\$75,000
			<b>Total</b>	<b>\$115,000</b>
<b>3.</b>	<b>Planting, Final Grading, Outlet Channel and Control Structure</b>			
	USFWS	Partners for Fish and Wildlife Program	Outlet Design, Final Grading	\$45,000
			SAGA-FWS Contract - Reveg	\$26,800
			Intern	\$10,000
	NRCS	Wildlife Habitat Improvement Program	Fish passage channel	\$6,000
			Structure for water control	\$3,750
			Final grading, topsoil placement, planting	\$42,000
	Full Circle Farms	Donation-Cash	Plant Materials	\$5,000
	Full Circle Farms	Donation-Labor	Collection and Planting	\$5,600
	Full Circle Farms	Donation-In Kind	Plant Storage	\$3,000
	Duran Construction Co.	Third Party EPA Mitigation Compliance	Topsoil Delivery, 5500cy	\$30,000
			<b>Total</b>	<b>\$177,150</b>
<b>4.</b>	<b>Trail Construction</b>			
	DNR	Recreational Trails Grant	Trail materials, construction	\$46,746
	Glacier State Contractors	Private Donor	Trail grading and gravel	\$14,000
	Juneau Docks and Harbors	Donation- In Kind	Bridge and Delivery	\$14,900
			<b>Total</b>	<b>\$75,646</b>
			<b>GRAND TOTAL</b>	<b>\$504,796</b>

## Timeline for Purchase, Filling and Enhancement

	2005															2006				
	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
Land Purchase																				
Planning and Design for Filling																				
Planning and Design for Revegetation																				
Earthwork and Filling																				
Outlet Channel and Control Structure																				
Planting																				
Trail Construction																				

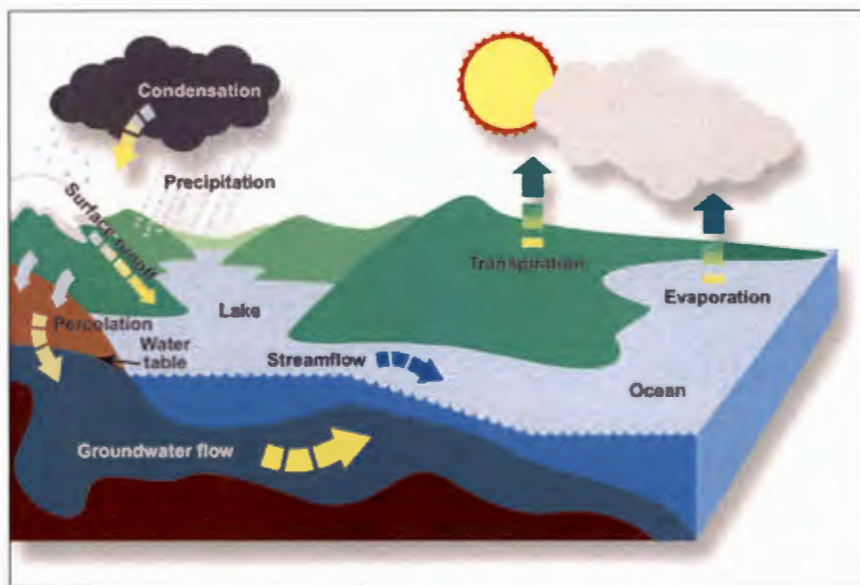


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## GROUNDWATER IN THE AGGREGATE INDUSTRY

*Groundwater is a renewable resource that is in constant motion as part of the hydrologic cycle. Above-water pits and quarries have little or no effect on water levels or the flow of groundwater.*





## What is Groundwater?

Just as the name implies, groundwater is water contained in the pores and fissures of the earth. Groundwater is a renewable resource. It is in constant motion, part of the hydrologic cycle (see Hydrologic Cycle on the cover page). Rainfall and snowmelt infiltrate into the earth to recharge groundwater, which then flows as baseflow into streams and lakes. Evaporation from open water, and transpiration from plants, returns water to the atmosphere to complete the cycle.

A common misconception is that groundwater flows in underground rivers and lakes like surface water. Instead, groundwater seeps very slowly through the pore spaces and small fissures in the soil and rock. Materials such as clay have a low permeability, and hence very slow groundwater flow, while sand and gravel, or highly fractured rock, have high permeability and permit groundwater to flow faster. These more permeable layers are called aquifers.

The water table is the depth at which the soils or rock become completely saturated with groundwater. If a hole were dug, and left to stand for a while for groundwater to seep in, the water level in the hole would represent the water table. The water table elevation is not static, though, and it can fluctuate in different seasons and from year-to-year, depending on the amount of recharge. Natural depressions can intersect the water table to form lakes, ponds and wetlands.

## Water Wells

Groundwater is a critical resource in Ontario - nearly one quarter of us rely on wells for our water supply. Some of these are municipal wells serving urban communities, but the vast majority are private water wells, mainly in the rural parts of the province. Two common types of wells are shallow dug wells which draw water from the water table, and bored or drilled wells which draw water from deeper aquifers.

The *Ontario Water Resources Act* and the *Environmental Protection Act* both serve to protect the quality and quantity of groundwater. They are administered by the Ontario Ministry of the Environment, which will respond to public complaints regarding interference with water wells. The Ministry has several excellent publications available to

### Fact Sheet

#### Groundwater at Pits and Quarries

- Groundwater is a renewable resource.
- Water wells are protected under provincial legislation.
- Above-water pits and quarries can have a beneficial effect on groundwater and aquatic resources.
- Below-water pits and quarries can be operated without significant groundwater impacts if they are carefully designed and operated.
- Permits to Take Water ensure that aggregate wash plants do not harm water resources.

*Aggregate extraction and processing is a clean industry that does not provide groundwater contaminants.*

homeowners on subjects including proper water well construction and maintenance, protecting water quality in wells and managing water shortages (1-800-565-4923 or [www.ene.gov.on.ca](http://www.ene.gov.on.ca)).

Wells and their associated equipment require ongoing maintenance. Even with the best maintenance, though, they still tend to degrade naturally over a period of years, through mechanical wear and clogging of the well screen, pump and pipes, .

## Can Pits and Quarries Affect the Flow of Groundwater?

The answer depends on the type of pit or quarry.

### Above-Water Pits and Quarries

Most of Ontario's sand and gravel pits, and a few of its rock quarries, are excavated entirely above the water table. This type of operation has little or no effect on water levels or the flow of groundwater because there is no direct, physical alteration of the water table or any aquifers. Monitoring programs at above-water pits and quarries across Ontario have confirmed that groundwater is unaffected.

In some ways, above-water pits and quarries can actually be beneficial to groundwater. They create a "bowl" that captures and infiltrates all rainfall and snowmelt rather than allowing some of it to run off across the ground surface. A study on the Oak Ridges Moraine documented a number of benefits related to this extra groundwater recharge (Hunter/Raven Beck,

1996). One of the important benefits is to reduce direct run-off to surface water streams and increase cold groundwater baseflow which is critical to fish habitat.

## Below-Water Pits

Below-water pits usually use large excavators or draglines to dredge sand and gravel from the *pit ponds* that form below the water table level. Generally, this type of extraction does not have major impacts because most of the groundwater remains in the pit, or drains back into the pit. This type of pit also captures surface water run-off and promotes more groundwater recharge, but these benefits are offset by the increased evaporation that will occur from the surface of a pit pond. Minor water losses also occur due to residual moisture contained in the aggregate products that are shipped from the site. Finally, the removal of solid sand and gravel particles from below the water table has the effect of temporarily lowering the water level in a pit pond (imagine removing a rock from a bucket of water).

The water surface in very large below-water pit ponds will stabilize at a uniform level, whereas the groundwater table before extraction may have been irregular or sloping. Therefore, the water table around the pit will have to “adjust” to the water level in the pit pond, possibly resulting in slightly different groundwater flow patterns. Fortunately, there is a simple solution where this may be a problem – digging several smaller pit ponds rather than one large pond (Ostrander *et al.*, 1998).

When all of these factors are combined, the net effects of below-water extraction are normally minor and very localized. However, in certain circumstances they could still be significant if there are sensitive features such as wetlands or shallow wells in close proximity. As a result, a detailed and careful hydrogeological study is necessary when licencing this type of pit (Ministry of Natural Resources, 1997), and mitigation (solutions) to any negative impacts will be required. An ongoing groundwater monitoring program may be required.

## Below-Water Quarries

Most quarries that extract from below the water table pump water out of the excavation so that the work of blasting and recovering the bedrock can be done on a dry floor. *Dewatering* usually does affect groundwater levels and flow patterns around the site, since it artificially lowers the water table to at least the base of the quarry. Hydrogeologists call the area around the quarry that is affected by the dewatering the *drawdown cone* or the *radius of influence*. Wells, streams, wetlands, or other sensitive features within

this area must be carefully studied to predict the impacts and devise mitigation measures before the quarry can be licenced (Ministry of Natural Resources, 1997) and a groundwater monitoring program will normally be required.

There are many locations in Ontario where below-water quarries are successfully operated while sensitive water uses continue nearby – it depends very much on the specific hydrogeological setting. Recently, some innovative technologies have been introduced in Ontario to lessen the effects of quarry dewatering, such as pumping the water from the quarry back into the groundwater system around the quarry to artificially recharge the water table. This has so far proven to be quite successful (Gartner Lee Limited, 2001).

## Other Water Takings

Pits and quarries have uses for water, similar to other businesses, such as supplying offices and shops with drinking water, watering lawns and gardens, etc., but these tend to be relatively minor. Most types of aggregate processing, such as crushing and screening, are dry operations and do not require water supply.

However, to minimize dust (which is a byproduct of excavation in a pit or quarry) spray water is used on internal haul roads, processing equipment, stockpiles and trucks.

One exception is aggregate washing plants, which are used at some sites, and do require relatively large quantities of water. Most plants recycle wash water through a “closed loop” series of holding ponds and settling ponds (i.e., the water is re-circulated, with no off-site discharge), so that the amount of water actually consumed in the process is usually less than about 10%. This *make-up water* normally comes from local groundwater or surface water sources. A common configuration would be to have a well that would be used occasionally during the production season to “top up” the ponds.

These water takings are regulated separately from the pit licence under the *Ontario Water Resources Act*, and controlled through Permits to Take Water. The applications and related hydrogeological studies are carefully reviewed by the Ministry of the Environment, other government agencies, and the interested public through the Environmental Bill of Rights process to ensure there will be no unacceptable impacts from these water takings, before the permit is issued.



## GROUNDWATER IN THE AGGREGATE INDUSTRY

### Can a Pit or Quarry Contaminate Groundwater?

It surprises some people to learn that aggregate extraction is a clean industry. Processing aggregates is a purely mechanical process of crushing, screening, blending, and sometimes washing (with water), without the need for chemicals. At most sites, fuels and lubricants for the equipment are the only potential sources of groundwater contamination, and these are closely regulated under the *Technical Standards and Safety Act*. A spills contingency plan is a standard condition of every new aggregate licence.

Bacteriological contamination of the type responsible for the Walkerton tragedy comes from human and animal wastes. Aggregate extraction and processing is not a source of this type of contamination.

As a result, water quality in and around pits and quarries is not normally an issue. This was confirmed through a study in 1989 as part of the Ontario government's MISA program, where monitoring at a selected number of pits and quarries found good water quality, with only sporadic traces of organic compounds at some sites that might indicate the use of petroleum products (SENEC, 1989). In addition, there are many site specific monitoring programs in place at aggregate operations.

### What About Water Temperature?

Water temperature concerns are occasionally raised in conjunction with below-water pits. A pit pond warmed through the summer months could result in a flow of warmer groundwater to nearby points of baseflow discharge and, in turn, affect cold water fisheries resources. An analysis conducted on behalf of the Credit

Valley Conservation Authority in 1998 concluded that pit ponds have minimal impact on groundwater temperatures, and that these minor effects are completely dissipated within a few hundred metres from a pit (Ostrander *et al*, 1998). Field monitoring has also confirmed that groundwater returns to its normal background temperature within tens of metres of pit ponds (Harden Environmental, 1995).

As a result of the research to-date, thermal effects of pits and quarries is not considered to be a major issue in most cases. However, where there are cold water fisheries close to a pit pond, appropriate investigations and studies are required, and the setbacks and buffer zones will be adjusted accordingly.

For further information, please contact the OSSGA Environment and Resources Manager, at (905) 507-0711 or visit the OSSGA website at [www.ossga.com](http://www.ossga.com).

Prepared by Gartner Lee Limited in consultation with OSSGA's Environment Committee.

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2. Bronze Plaque Award
3. Rehabilitation of Pits and Quarries
4. Being a Good Neighbour
5. Importance of Aggregates
6. Geology and Aggregate Extraction
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8. Groundwater in the Aggregate Industry
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January 17, 2022

Mr. Ed Martin III, President  
Kenai Peninsula Aggregate and Contractors Association  
Via email: Kpac ([kpacassocoation@yahoo.c0m](mailto:kpacassocoation@yahoo.c0m))

Subject: Comments on KPB proposed material site ordinance amendments

As requested, I have reviewed the ordinance proposed to amend KPB 21.25 and 21.50.055 regarding material site permits, applications, conditions and procedures and offer the following comments, observations and suggestions. These comments are provided pro bono as a courtesy to your organization as well as to the Kenai Peninsula Borough and its residents.

I have been retired, as a principal partner with the engineering firm of Wince-Corthell-Bryson in Kenai, for the past three years and therefore have no further interest in contracts or projects within the Borough. I have been a Kenai Peninsula resident since childhood when my parents homesteaded the Kasilof area in 1957 and have over 50 years of construction and engineering experience in the central, southcentral and southwestern regions of Alaska.

I have over 40 year's experience in the planning, design, and management of federally funded highway and airport projects where the National Environmental Protection Policy Act (NEPA) procedures are followed to evaluate and mitigate environmental impacts caused by construction and use of the resulting infrastructure.

All this being said I will offer my comments from a engineering prospective and as a good neighbor in the order of the documents you provided.

**Whereas #1and2:** Not clear to me what Climate Change has to do with this ordinance

**Whereas #3:** I assume "other uses" refers to material production. I.e.. Crushing, screening, asphalt and concrete supply.

**Whereas #4:** I agree larger setbacks are not the answer where a material barrier will address impacts off site.

**Whereas #5:** Protecting, maximizing, minimizing is not a very definitive word, perhaps mitigating should be considered.

**Whereas #12:** *Dust, noise, traffic and visual aesthetics appears to me to be the crux of this ongoing debate and as a good neighbor is a reasonable topic. Its how they are reasonably addressed is the issue to me.*

**Whereas #17:** I agree this catchall statement that additional requirements may be required casts uncertainty in the process and should be removed. The permit process should establish the conditions up front.



## SECTION 1. KPB 21.25.030

### 21.25.030. – Definitions

**Permit Area and Haul routes** I think this is a valid issue that should be addressed in the permit process. While I agree all vehicles have the right to use the borough roads, most of the Borough roads are not designed and built to carry high numbers of heavy trucks on a daily basis. Alternate access and/or upgrading existing roads may be something to consider to mitigate damage to existing roads as well as other traffic concerns.

#### 21.29.020 Material extraction and activities requiring a permit

**B. Conditional land use permit (CLUP)** I see no problem with including material processing in with the site plan as crushing and screening operations can be noisy and dusty and can be addressed with effective barrier plans such as earth berms. For the smaller pits processing is not usually not going on so would be a non applicable item on a checklist.

#### 21.29.030 Application Procedure

**9. Site Plan.** The Site plan along with accompanying SWEPP, Traffic, and Environmental mitigation proposals should be prepared or at least reviewed and signed off on by a Alaska registered Civil Engineer. A checklist would be convenient with this process.

**9f. Test Holes.** Perhaps the mining plan should be limited to the depth of test holes with provisions to amend the plan later or utilize a drill rig to bore the test holes.

**9h. Waterbodies and wetlands.** The Borough GIS source provides good planning level information on wetlands. Definitive designations can easily be requested with a two-page application to the local Corp of Engineers office in Soldotna for little to no cost and only takes 2-4 weeks to obtain.

**21.29.040. Standards for sand, gravel or material sites.** This section addresses protecting or minimizing environmental conditions again perhaps mitigating would be an acceptable term. Regarding damage to adjacent properties, I believe that goes with out saying. Any damage to another person's property is protected under state law and pursuable in civil court.

#### 21.29.050. Permit Conditions

**2. Buffer Zone. A)** I don't believe a 50-foot strip of trees affectively buffers adjacent property and ROW from visual, noise or dust impacts. A 10-foot minimum, neatly shaped and seeded, earth berm would affectively mitigate those three impacts and is readily available from site stripping as well as being available for reclamation activities. The buffer should not overlap ROW utility easements as those are dedicated for utility use.

I think it might be a good idea to establish some parameters to be achieves with the buffer such as visibility level which a 10-foot berm achieves. Noise levels which the borough proposes late at 75 decibels should be achievable considering FAA noise standards for airport noise is 65 decibels and easily measured with a decibel meter which I have can loan you. Airborne particulate is a difficult to measure without special equipment so maybe a visible standard could be used.

**4. Water Source Separation b.** I don't believe a few feet of gravel separation to the ground water protects it at all from fuel and oil spills, on the contrary. Minor spills that can be obscured by pit operations can build up over time and steadily leach into the water table not showing up for quite some time and well down gradient resulting in a long term impact.

Dredging operations below water table can be boomed off and if a spill occurs is immediately visible and can be quickly boomed in, skimmed and absorbed.

**5. Excavation in the water table.** Simply dredging into the water table should have little affect on its level or down gradient wells. I agree some horizontal separations is required and would think the 200-foot separation required by ADEC would be sufficient.

If dewatering is proposed, then the following requirements address those impacts .

**6. Waterbodies.** I believe a 100-foot buffer with appropriate SWEPP practices will adequately protect surface water and wetlands.

**11. Hours of Operation.** Over my career I have only been involved with a few double shifting projects and they were on airports well away from residential areas. From what I have observed most operations run about 12 hours a day 5-7 days a week. Perhaps a special use permit could be utilized for unusual working hours.

**17. Sound Level.** The 75 decibel limit may be impossible to meet during initial pit development until the clearing, stripping, berming and the pit is to a depth below grade. Perhaps the permit could allow the 1.5 increase during initial development. This should be achievable during the first season of operation.

The smaller pits (1-2.5 acres) should be exempt from this requiremen, as I don't believe they can ever meet the requirement and they are normally project specific, only operating for a few weeks to a few months.

**19. Ingress and Egress.** Should be addressed in the permit process to assure existing Borough roads are capable of accommodating the increase in heavy truck traffic.

I have no comments on the Decision and Reclamation sections as that is housekeeping between the operators and the Borough in m my mind.

I also think that the final product of this ordinance should be a result of a consensus of the stakeholders and not simply a mater of majority vote rule. In the end a Permit Checklist should be provided that addresses all the impacts, their limits and provides a template for proposed mitigation .

One last observation is that considering how important gravel borrow sites are to the long term development and economics of the Peninsula I think the Borough and State should be encouraged to set aside some suitable land in proximity to the road system but buffered from private holding for land lease or sale. Making land available that is more neighbor friendly would solve not only this current issue but insure the continued growth of our area.



I hope my comments provide some ideas for consideration and wish you and the Borough success with the continued process to address this matter

Sincerely

A handwritten signature in cursive script, reading "Casey Madden". The signature is written in dark ink and is positioned above a horizontal line.

Casey Madden, P.E.  
Alaska Registered Civil Engineer No. 7235



## Broyles, Randi

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**From:** Blankenship, Johni  
**Sent:** Monday, January 24, 2022 10:52 AM  
**To:** Broyles, Randi  
**Subject:** FW: New Public Comment to Assembly Members

### Public comment

**From:** Kenai Peninsula Borough <webmaster@borough.kenai.ak.us>  
**Sent:** Monday, January 24, 2022 10:48 AM  
**To:** BoroughAssembly <Borough-Assembly@kpb.us>; Mayor's Department <MayorDepartmental@kpb.us>  
**Subject:** New Public Comment to Assembly Members

**Your Name:** Joseph Ross

**Your Email:** [smokeross@alaska.net](mailto:smokeross@alaska.net)

**Subject:** Gravel ordinance

### Message:

No other industry in the borough is regulated to the extent that you are considering for our local gravel producers. Where are the regulations for the dirt burner? There was an immense amount of public outcry about it, but no task force was formed by KPB to address it. Homeless shelters? Same deal. Marijuana growers? Crickets. What you are attempting is spot zoning, and will cripple the gravel industry. One item you are considering in the new list of zoning is back up alarms. Will you be making rules about back up alarms for everyone, or just gravel producers? I hear back up alarms from Peak Construction every day. Sometimes even at night. How about the back up alarms on the graders out plowing snow at night?

Need to look @  
18 AAC 80 SOA Drinking  
Water Dept - there are  
some source water provisions  
80.015.

- differentiate Bt major  
and minor extraction operations  
and those in GWT  
stay above GWT

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. (Material processing occurs on every civil construction jobsite. This is a burden to the public at large to develop their property)

#### 21.29.030. Application procedure.

- A. In order to obtain a counter permit or CLUP, an applicant shall first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application shall include the following items:
  1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
  2. Expected life span of the material site;
  3. A buffer plan consistent with KPB 21.29.050(A)(2);
  4. Reclamation plan consistent with KPB 21.29.060;
  5. The depth of excavation;

6. Type of material to be extracted and type of equipment to be used;
7. Any voluntary permit conditions the applicant proposes. Failure to include a proposed voluntary permit condition in the application does not preclude the applicant from proposing or agreeing to voluntary permit conditions at a later time;
8. Surface water protection measures, if any, for adjacent properties designed by a SWPPP certified individual civil engineer (many of the operators are certified), including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;

DEC Regs  
on "Certified  
Individual"  
may not incl  
Civil Engr

Don't know what this means

9. A site plan and field (verification) prepared by the site operator or a professional surveyor licensed and registered in the State of Alaska, including the following information: (surveyors don't offer this service, nor are qualified)

Should separate  
site plan from other issues  
calling it a "site plan" may  
bring other state requirements  
into play

- 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; (can't dig that deep many times, if resource is deeper than conventional equipment can dig without stage excavation)
- g. Location of wells of adjacent property owners within 300 feet of the proposed parcel boundary;

may not be enough for  
Public wells  
- separate Private  
From public sources



- 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; (wetland mapping by KWF under contestment and found unreliable)
- [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]i. North arrow;
- [L]k. The scale to which the site plan is drawn;
- [M]l. Preparer's name, date and seal; (A site operator may not have a 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.

*Separate Site  
Plan From other  
Requirements*

- 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 (protects against is an absolute term and most of the time is unobtainable) Minimize aquifer disturbance, road damage, physical damage to adjacent properties, dust, and, noise, and visual impacts. (See explanation below) Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:
1. Protects against Minimizes the lowering of water sources serving other properties;

- properties;
2. Protects against Minimizes physical damage to [OTHER] adjacent
  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] (visual impacts implies the taking of visual rights from one citizen and giving to another. I have done extensive research on this and found the KPB just doesn't have the authority. Keeping this language puts the KPB at risk of litigation.)
  6. Provides for alternate post-mining land uses[.];
  7. Protects Minimizes Receiving Waters against adverse effects to fish and wildlife habitat;
  8. Minimizes Protects against traffic impacts; and
  9. Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents. (Possible Zoning)

#### 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 or site operator. Stakes shall be in place [AT TIME OF APPLICATION] prior to issuance of the permit. (Many site operators have GPS capability accurate to +/- 1".)

2. BUFFER ZONE. A BUFFER ZONE SHALL BE MAINTAINED AROUND THE EXCAVATION PERIMETER OR PARCEL BOUNDARIES. WHERE AN EASEMENT EXISTS, A BUFFER SHALL NOT OVERLAP THE EASEMENT, UNLESS OTHERWISE CONDITIONED BY THE PLANNING DIRECTOR OR PLANNING COMMISSION.

A. THE BUFFER ZONE SHALL PROVIDE AND RETAIN A BASIC BUFFER OF:

I. 50 FEET OF UNDISTURBED NATURAL VEGETATION, OR

II. A MINIMUM TEN SIX-FOOT EARTHEN BERM WITH AT LEAST A 2:1 SLOPE, OR (THIS 10FT BERM IS CONTINGENT ON THE SETTLEMENT OF THE WATER TABLE ACCESS)

III. A MINIMUM SIX-FOOT FENCE.

B. A 2:1 SLOPE SHALL BE MAINTAINED BETWEEN THE BUFFER ZONE AND EXCAVATION FLOOR ON ALL INACTIVE SITE WALLS. MATERIAL FROM THE AREA DESIGNATED FOR THE 2:1 SLOPE MAY BE REMOVED IF SUITABLE. STABILIZING MATERIAL IS REPLACED WITHIN 90 DAYS FROM THE TIME OF REMOVAL.

C. THE PLANNING COMMISSION OR PLANNING DIRECTOR SHALL DESIGNATE ONE OR A COMBINATION OF THE ABOVE AS IT DEEMS APPROPRIATE. THE VEGETATION AND FENCE SHALL BE OF SUFFICIENT HEIGHT AND DENSITY TO PROVIDE VISUAL AND NOISE SCREENING OF THE PROPOSED USE AS DEEMED APPROPRIATE BY THE PLANNING COMMISSION OR PLANNING DIRECTOR.

D. BUFFERS SHALL NOT CAUSE SURFACE WATER DIVERSION WHICH NEGATIVELY IMPACTS ADJACENT PROPERTIES OR WATER BODIES. SPECIFIC FINDINGS ARE REQUIRED TO ALTER THE BUFFER REQUIREMENTS OF KPB 21.29.050(A)(2)(A) IN ORDER TO MINIMIZE NEGATIVE IMPACTS FROM SURFACE WATER DIVERSION. FOR PURPOSES OF THIS SECTION, SURFACE WATER DIVERSION IS DEFINED AS EROSION, FLOODING, DEHYDRATION OR DRAINING, OR CHANNELING. NOT ALL SURFACE WATER DIVERSION RESULTS IN A NEGATIVE IMPACT.

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

with a  
steeper not steeper  
than 2:1

Comply w/  
18 AAC 70-50A  
Water Quality  
Regulations



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. (Historically, choosing the natural vegetation buffer has almost always ended with both neighbors disappointed. The home owner doesn't realize that the forest isn't very dense and can see and hear the material operation.) a minimum six-foot fence, a minimum six-foot berm or a combination thereof. (The berms are historically the best tool. Does a great job of minimizing the dust and noise, as well as providing a visual screen. A ten-foot berm will add 280% more in size and reclaimable material stored for later use in reclamation.)
- b. A 2:1 slope shall be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 90 30days from the time of removal. (30 days may not be enough time to move the amount of material)
- c. Where an easement exists, a buffer shall not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable. (Basically, stacking buffers)
- d. The buffer area may be reduced where the planning commission or planning director, as applicable, has approved an alternate buffer plan introduced by the applicant. (This is necessary to clarify that the planning commission or director cannot make an alternate plan at will) The alternate buffer plan must consist of natural undisturbed vegetation, or a minimum ten six-foot berm, or a minimum six-foot fence or a combination thereof, consisting of only one option in a single geographical location; (prevents stacking of buffers, and provides consistency in permit requirements) 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. (Could be a lot cleared years before or an old wildfire site)

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. (Until vicinity is better defined, we can't consider this)

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 an excavation distance of 15 feet below the seasonal high-water table must be maintained under these conditions:

1. No dewatering is allowed.

2. The bottom of excavation must be 15 feet above the nearest, shallowest private wells intake, within 500 ft of operation.

3. A spill response kit.

4. Operations shall not breach an aquifer-confining layer.

A four-foot vertical separation [FROM] between extraction operations and the seasonal high-water table be maintained. (I have talked with multiple hydrologists and engineers and have come to a conclusion that this is not only possible, but preferable in regard to reclamation, spill response and potential clean up. I will have letters of opinion in favor. The ponds or lakes created will be reclaimed upon existence, provide habitat for wetlands and wildlife, potentially raise property values as lake front property, etc.)

*He above seems conflicting - Allows operator to excav. 15' into GWT but requires a 4' vert separation to GWT?*

*Drinking water source - 700' for public well / source*

*who provides the adjacent well information? How is it obtained? What if adjacent property owner refuses to give that info? well drillers will not provide a log for someone's well who owns approval - especially in a contested situation.*

*see 18 AAC 80.1990(A)*

- 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. (Null and void if minimum water table excavation regulation is considered)
- 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 15 vertical (300 horizontal feet) of a water source may be permitted with the approval of the planning commission based on the following: (15 vertical feet is better measurement if minimum water table excavation regulation is considered)

- 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 ponds less than one acre on private land, man-made waterbodies being constructed during the course of the materials extraction activities. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required. (Again, we can not trust the current adopted wetland mapping. It has been found incorrect. Also, we would like to manipulate and possibly enlarge waterbodies within private land. Promoting wetland expansion and environmental habitat.)

- b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.

Containment Areas  
are problematic bk  
they collect water  
that will prob. stain  
a sheep - then what?

7. *Fuel storage.* Fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface. Double wall tanks are also acceptable. (Double wall tanks are an acceptable standard for many other agencies)
8. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads as required by KPB 14.40.175 and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
9. *Subdivision.* Any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit. The planning director may issue a written exemption from the amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a material site and all original permit conditions can be met.
10. *Dust-control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
11. *Hours of operation.* [ROCK CRUSHING EQUIPMENT SHALL NOT BE OPERATED BETWEEN 10:00 P.M. AND 6:00 A.M.]
- a. Processing equipment shall not be operated between 10:00 7:00 p.m. and 6:00 a.m. (Construction season is short and

processing operations are usually job specific. This puts a burden on development at all levels and can extend the length of days on a job that effects public safety.)

- b. The planning commission may grant exceptions to increase the hours of operation and processing based on surrounding land uses, topography, screening the material site from properties in the vicinity and conditions placed on the permit by the planning commission to mitigate the noise, dust and visual impacts caused by the material site.

12. *Reclamation.*

- a. Reclamation shall be consistent with the reclamation plan approved by the planning commission or planning director as appropriate in accord with KPB 21.29.060.
- b. [AS A CONDITION OF ISSUING THE PERMIT, THE APPLICANT SHALL SUBMIT A RECLAMATION PLAN AND POST A BOND TO COVER THE ANTICIPATED RECLAMATION COSTS IN AN AMOUNT TO BE DETERMINED BY THE PLANNING DIRECTOR. THIS BONDING REQUIREMENT SHALL NOT APPLY TO SAND, GRAVEL OR MATERIAL SITES FOR WHICH AN EXEMPTION FROM STATE BOND REQUIREMENTS FOR SMALL OPERATIONS IS APPLICABLE PURSUANT TO AS 27.19.050.] The applicant shall operate the material site consistent with the approved reclamation plan and provide bonding pursuant to 21.29.060(B). This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.

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



or observed by borough personnel will be forwarded to the appropriate agency for enforcement.

14. ~~[VOLUNTARY]~~Volunteered permit conditions. Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission for CLUPs or the planning director for counter permits. Such conditions must be consistent with the standards set forth in KPB 21.29.040(A). Planning commission approval of such conditions shall be contingent upon a finding that the conditions will be in the best interest of the borough and the surrounding property owners. ~~[VOLUNTARY]~~ Volunteered permit conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in ~~[VOLUNTARY]~~ volunteered permit conditions may be proposed ~~[AT]~~ by permit ~~[RENEWAL OR AMENDMENT]~~ modification.
15. *Signage.* For permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access, whichever is more visible. Sign dimensions shall be no more than 15" by 15" and must contain the following information: the phrase "Permitted Material Site" along with the permittee's business name and a contact phone number.
16. Appeal. No clearing of vegetation shall occur within the 50 100-foot maximum buffer area from the permit boundary nor shall the permit be issued or operable until the deadline for the appeal, pursuant to KPB 21.20, has expired. (No need for this regulation as the natural vegetative buffer is not and should not be a best choice. If the need for additional buffing is required, the ten foot berm will suffice.)
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.  
(There is no science behind this. Almost every instance, it will be impossible to achieve with OSHA and MSHA standards. Also, will be further managed by the introduction of larger 10ft berms)
18. Reverse signal alarms. Reverse signal alarms, used at the material site on loaders, excavators, and other earthmoving equipment may 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. (May is the proper term and gives flexibility)
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. (This can only be instituted with strict standards and limitations of the planning commissions discretionary power. As written, it gives the planning commission discretion at will in an area of construction that they don't have the expertise.)
20. Dust suppression. Dust suppression may shall be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on haul routes within property boundaries. Based on surrounding land uses the planning commission or planning director, as applicable, may waive or reduce the requirement for dust suppression on haul routes within property boundaries. (As explained before)



21. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8) must be approved by a licensed civil engineer or SWPPP certified individual.

22. Groundwater elevation. All material sites must maintain one monitoring tube per ten acres of excavated area four feet below the proposed excavation. (This will be unnecessary as the material site will be digging in the water table or unable to reach it and not effecting its formation.)

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. At the time of application. (This gives consistency in the regulation)

#### 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. (This is written that the planning commission will disapprove of applications that do not meet the mandatory conditions. It contradicts many previous languages that gives the planning commission discretion to approve applications that may need special modifications.)

#### 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. (Why the need for a five-year reclamation plan? As site operators, we cannot foresee the market in a five-year span, therefore, cannot provide an accurate plan for five years.)
- B. The applicant may shall revegetate with a non-invasive plant species and reclaim all disturbed land (There are many ways to reclamation. This limits it to one method) [UPON EXHAUSTING THE MATERIAL ON-SITE, OR WITHIN A

What's the purpose of the monitoring well? Is it (are they?) down gradient? Testing?



To whom it may concern:

The Kenai Peninsula Aggregate and Contractors Association does not support ordinance 2021-41. We feel that it is flawed in many ways, and in some respects, impossible to follow.

The lack of all information or slanted information in the whereas is misleading. The use of Changing Climate has nothing to do with material extraction nor is scientifically proven without a doubt. The lack of mention that this exact document other than its previous designation of 2019-30 mayor substitute, was voted down, reconsidered, then voted down again, is important to note.

We feel the creation of this document was not done in a fair, well educated, and well represented way. The Material Site Work Group was formed using 8 members, and only 2 from the industry it would regulate. A 6 to 2 vote was all too common, as the majority of its members had limited experience if any at all. This ultimately created an ordinance that no one could support. That being said, we feel if such document should be created, this ordinance should not be considered as a guide whatsoever, as it would be counterproductive. Our reasoning is stated below.

The use of aesthetics, view, unsightliness, or any term that insinuates regulating view shed rights is not a power afforded to the KPB. After many hours of research, we have found that there are only 3 ways view shed rights have been regulated or transferred in the USA. The federal government regulates view shed on federal land containing historical sites and parks. Local first-class governments have zoning power. Some local governments have regulated through zoning, view shed rights over large zones containing all parcels of land within. There is no precedent of any government regulating view shed on singular parcels of land pertaining to one industry. The KPB is a second-class government with no zoning power. Last, we have found some instances where view shed rights have been transferred in the private sector through purchase.

This ordinance was founded by its initial goals. Those goals contained view shed language and concerns. Therefore, the ordinance was given wrong direction from its inception. All language concerning view must be stricken from its contents.

The definition of "disturbed" should not include "stockpiles" as it is used in 21.29.060 (b). The intent of reclamation is to put the land back to a suitable condition after operations have ceased. If operations have truly ceased, and the land has been put back to a suitable condition, there will be no stockpiles.

Eliminating the term "exhausted" was counterproductive in the intent of the original use of the land.

The definition of "haul route" and its use in the ordinance is unfairly singling out one industry as many others haul commercially in the KPB. Also, we are already regulated by KPB 21.29.050 (8), KPB 14.40.175, and subject to KPB 14.40.

The definition of "vicinity" is too broad and can give other residents not effected by operations by geographic and topographic locations the ability to diminish operations such as processing. Adjacent was a better term used.



21.29.030 (8) is already regulated by the federal government through SWPPP plans. This is unneeded, and a further burden to the KPB and the operator.

21.29.030 (9) (f) the timeframe from May to December does not coincide with construction season. Many bids come out before May for the upcoming season and a contractor will have to speculate and possibly apply for a permit before bidding a project. This will only burden the public to unnecessary costs and safety by denying the opportunity to obtain a close source of material.

21.29.040 (a) (3,4,5) the definition of “minimizes” and the inclusion of “protects against” is an unobtainable condition. “Minimizes” allowed the operator the ability to mitigate the situation. “Protects against” insinuates the absolute disbursements of, and is an impossible and unfair condition. It also contradicts other conditions levied in this ordinance. (3) is impossible as written, as dust moves naturally. It is not only unfair, because everyone creates dust, such as a parking lot on a windy day, or a homeowner mowing their lawn, but impossible to comply to because one particle across the property line defies the law. (4) is already regulated by the federal government agency MSHA. This is a further burden on the KPB and the operator. (5) is unlawful for the KPB to regulate as it insinuates the taking of view shed rights and the KPB is a second-class government with no zoning power.

(8) also includes the term “protects against” and is an impossible condition. As soon as an operator uses a public road to travel, they will impact traffic just by their presence. We have the right to travel by federal law, 5th amendment to the U.S. constitution.

21.29.050 (2) we feel the changes in the buffer zones were negotiated on incorrect information by KPB staff. Our representatives were misinformed as well as the rest of the MSWG and public as to the current distance and application of buffers conditioned to the applicant. As we read the current law, you may impose a combination of buffer requirements on an application, but only one in any geographical location. “Stacking” is prohibited. For instance, you may have a 50ft natural vegetative buffer on the north border and a minimum 6ft fence on the west, and a minimum 6ft berm on the east, but not all on one border. The word “or” in (2) (a) supports that. The KPB has already misused this law by asking for or requiring operators to comply with “stacking”. We feel the MSWG and the public did not receive the correct data to make an informed decision or to give public comment. A 100ft maximum buffer is an unnecessary burden to the applicant as it locks up a rare and high demanded commodity.

(2) (b) is in conflict with other conditions such as noise and undisturbed natural vegetation. How can we remove and replace material near or on the border of our site with heavy machinery if we cannot make noise, dust, or disturb vegetation?

(3) the use of “vicinity” is too broad. A property over a large hill, across a forest, on another road, may affect the use of processing even though they cannot see, hear, or be troubled in any way.

(4) we feel that the changes from 2 vertical ft. to 4ft is unnecessary. We don’t feel the MSWG was really given the option to go the other way and scientific data to make an informed decision. To our knowledge, there has been no conflict proven in the KPB with a 2ft separation. Many sites in Alaska mine in the water table. Some right here in the KPB. There is no precedent to support the taking of 2ft of resources away from an operator. We feel this section could have been abolished in its entirety and section (5) is sufficient.

(6) Again, we feel this is a product of lack of scientific data and there is no precedence to support the taking of 100ft of horizontal distance. State mining law is very different and allows for a much closer distance.

(17) this is also conceived by lack of scientific knowledge. Also, we are already regulated by the federal agency MSHA. This should be abolished in its entirety.

(18) this is unfairly enforcing a regulation on one industry. The KPB doesn't want to get involved in the type of safety equipment used. If an accident occurred, the KPB could be held liable. Also, we cannot control other possible members of the industry from outside the KPB who may not have these devices and come here to work for the season.

(19) this is unfair to the operator as we have the right to travel on any road. The possible burden to an operator could be massive because of topography and diminish the opportunity to access resources.

(20) this is unfair to the industry. We already supply dust suppression as good neighbors and stewards of the land. This is singling out one industry as almost all industries on the KPB are involved with a heavy truck creating dust on a road at some point. School busses create the same dust.

(21) Again, already regulated by federal SWPPP plans.

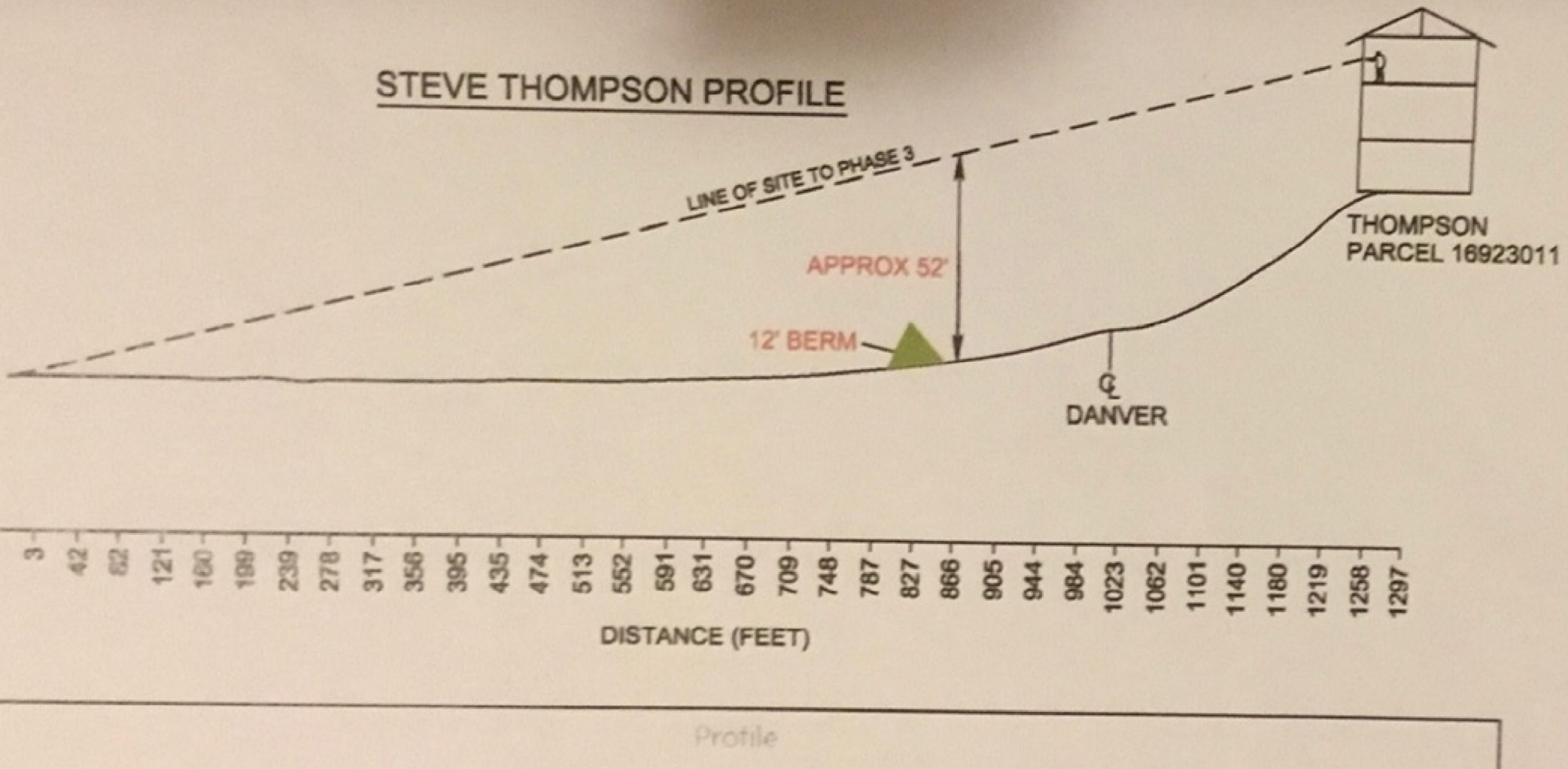
(22) unnecessary. Mining in the water table is common throughout Alaska.

21.29.060 (b) the use of "disturbed" includes basically, the whole site, including stockpiles. This is unrealistic. If there was more industry input, the MSWG would know that in general, the geology on the KPB is quite scarce of suitable topsoil. Every time you move it, you lose some. If we constantly reclamate our sites, we won't have the material to finish the job. Also, this doesn't have the provisions for other uses of the site such as a commercial property or parking lot needing no reclamation. The bonding requirement is also an undue burden as the State requires only \$750.

21.29.120 (c) we feel this is unjust to current operators. While to all it is reneging on the deal they agreed to at time of origin, some PEU's aren't required to submit a reclamation plan with the state and have no way of complying. This is just a way for government to not hold up their end of a deal struck with a citizen and harass them. It is not very becoming of the KPB to do so.

So, as you can see, the Kenai Peninsula Aggregate and Contractors Association and its members, families, and dependents, can find inconsistencies and faults in almost every aspect of this ordinance. It is inconsistent with industry standards, lacks scientific merit, isn't in harmony with other government agencies such as MSHA, OSHA, and DEC. This ordinance lacks an avenue for operators to complete discovery and reclamation that coincides with best management practices. In many areas it is based on false or inconsistent fact and overreach of regulatory power. Such as viewshed rights and wetland mapping. We consider this document as a form of a taking without just compensation and a form of zoning to a specific industry. We urge you to vote no on 2021-41 to save us all the conflict and burden it will surely cause.

Thank you for your consideration, Ed Martin III, President, KPACA.



## Turner, Michele

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**From:** Blankenship, Johni  
**Sent:** Tuesday, January 18, 2022 4:23 PM  
**To:** Turner, Michele  
**Subject:** FW: <EXTERNAL-SENDER>Please provide to the Assembly for tonight's meeting on Ord. 2021-14

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**From:** K, E, & E Martin <keeconstructionllc@yahoo.com>  
**Sent:** Tuesday, January 18, 2022 4:02 PM  
**To:** Blankenship, Johni <JBlankenship@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Please provide to the Assembly for tonight's meeting on Ord. 2021-14

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

To all it may concern :

Below is a Opinion of Jim Valenine of Reno ,NV Posted last Sunday Jan.16th in the "Nevada Appeal " News paper serving Carson City , NV I could not better put one's Rights to Private Property & the Constitutional Rights of Ownership & Due Process unobstructed by Government or anyone else!

Please review all Whereas's for facts & truth before considering any Therefore(s) that don't meet constitutional muster!

This second Class Borough shouldn't legislate ZONING without the power to do so & then only if a" taking is warranted " for a public good , then be prepared to pay just compensation . As I have told several Assembly members " Have the courage" to introduce new Zoning Powers for a vote of the people of this Borough. Otherwise this appears as a " BACK DOOR " way to those means. Ed Martin Jr., 702 Lawton Drive , Kenai, Ak

The Fifth Amendment of the U.S. Constitution includes a provision known as the Takings Clause, which states that "private property (shall not) be taken for public use, without just compensation."

This is a very important component of our Constitution that effects all property owners. Some governmental agencies in recent years have implemented laws, rules, policies and procedures that have impacted the quiet enjoyment of the property and the owner's use of the property which is, in fact, an uncompensated taking. More are being proposed as efforts to redistribute wealth become more commonplace. These often include giving rights to tenants that are adverse to the interest of the property owner with no compensation for their loss(es). Richard B. Sanders, Washington State Supreme Court justice, wrote a treatise about the "Fifth Amendment" wherein he wrote, "Our State, and most other states, define property in an extremely broad sense." He continued, "Property in a thing consists not merely in its ownership and possession, but in the unrestricted right of use, enjoyment, and disposal. Anything which destroys any of the elements of property, to that extent, destroys the property itself. The substantial value of property lies in its use. If the right of use be denied, the value of the property is annihilated and ownership is rendered a barren right."

Two more statements we find relevant: Founding Father John Adams, "The moment the idea is admitted into society that property is not as sacred as the law of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence."



From Nevada's own Wayne Hage, property rights activist, "If you don't have the right to own and control property then you are property."

It is so important to those of us living in the free world environment of the United States to understand that you can own real estate and you can enjoy all of the components of the bundle of rights of real estate ownership, as long as you don't willingly, or unwillingly, let them take them from you.

The bundle of rights affords the owner the right of possession, the right of control, the right of exclusion, the right of enjoyment and the right of disposition. We take it for granted that we have this with our property ownership because of the Fifth Amendment, but like all of the freedoms we enjoy in these United States, we must work to protect them.

.[ One must be diligent in protecting private property rights for all of us.

If you willingly allow a governing body to make a change that adversely affects you, then you cannot claim an uncompensated taking. If a body such as a Local Planning Commission makes changes to which you don't agree that have a negative impact on your, your use of your property and ultimately the value of your property, then you may be the victim of a Fifth Amendment breach.] Other factors can come into play so it is best to do your best to avoid such actions gaining any traction.

Don't let others push their agenda to your detriment. Your real property is yours, yours to do what you want with, not what you are told to do with it. That's why you bought it and that's why others still aspire to experience the American dream of home ownership without it being given to them.

KEE Construction, LLC



DATE: January 19, 2022

TO: KPB Assembly Members

SUBJECT: KPB 2021-41 Version 1  
Material Site Permits, Applications, Conditions and Procedures

RE: Assembly Mtg January 18<sup>th</sup> Testimony

I was asked by multiple Assembly Members to discuss or provide my testimony regarding KPB2021-41 V1. Below are the talking points that I prepared prior to the Assembly meeting. Not all this information was included in my testimony due to time constraints and/or the climate of the chambers.

#### 21.29.030.A.9 (Application Requirements)

Requiring that the site plan be prepared by a licensed surveyor is outside the Surveyors' area of work. Surveyors don't offer site development plan services. The portion of the application that should require a licensed and registered surveyor should be limited to the boundary survey, encumbrances, location and elevation of test holes, adjacent well locations, and location of water bodies. Essentially, a property as-built and boundary survey.

If KPB wants to require a professional to prepare the CLUP site development plan, then the ordinance should specify that a licensed Civil Engineer prepare the remainder of the required items.

The ordinance should require that site elevations (including those of test holes and groundwater) tie to a published datum or benchmark. Otherwise, each site may reference an assumed elevation and not a real-world elevation.

21.29.030.A.9(m) says 'field verification shall include staking the boundary of the parcel as sequentially visible intervals'. This conflicts with 21.29.050.A.1 which says 'stakes shall be in place prior to the issuance of the permit'. It is my recommendation that staking the parcel should be part of the field verification process otherwise prior to application.

#### 21.29.050.A (Permit Conditions)

21.29.050.A.2. Buffer Zones. I caution the Assembly on continuing to increase buffer width requirements without granting the Applicant a means to extract the material that is under or within the buffer zone. Gravel is a commodity that is utilized by all and will continue to be so. By providing the mechanisms for a material site to responsibly extract as much gravel as possible from said site, there becomes less need for additional material sites.

21.29.050.A.6 Waterbodies. The US Army Corps of Engineers no longer has jurisdiction on wetlands that are not connected to Waters of the US. Waterbody setbacks should not apply to these isolated wetlands. These isolated wetlands are often ideal locations of peat mining and often have marketable sand or gravel beneath the peat.

Page 1 of 2



21.29.050.A.21 Groundwater Elevation. Recommend adding that the groundwater monitoring tube be installed when excavation is within 10' or such of the groundwater elevation. Many of the area material sites exceed 20' of usable material and installing a monitoring tube to this depth is a major undertaking. As an example, installing a 25' deep monitoring tube would require an excavation of approximately 2,500 SF hole to gain that depth utilizing traditional excavation equipment.

21.29.050.A.13. Other Permits. Alaska Department of Natural Resources (Division of Land and Water) should be added to this list.

21.29.060 Reclamation Plan. ADNR updated their requirements for Material Sales Reclamation Plans in June 2021. This should be reviewed in context to KPB's reclamation requirements. ADNR has set per-acre bond amount at \$750/acre. ADNR allows for an operator to post bond with another government agency as allowed by a cooperative management agreement between that agency and ADNR Division of Land and Water. Does the Borough have a cooperative management agreement with ADNR? Otherwise, there is the potential for material site operators to have to 'double-bond' for reclamation.

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

Sincerely,

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

Gina DeBardelaben, P.E.  
Vice President  
**McLane Consulting, Inc.**

Introduced by:	Martin
Substitute Introduced:	03/14/06
O2006-01 (Long, Martin, Superman)	See Original Ord for Prior History
Hearing:	03/14/06
Action:	Substitute Introduced and Set for Public Hearings on 04/04/06 and 04/18/06
	Additional Hearing on 05/16/06
Action:	Postponed until 04/18/06
Action:	Time did not Allow for Action
Date:	05/02/06
Action:	Postponed until 05/16/06
Action:	Additional Hearing on 08/01/06
Date:	05/16/06
Action:	Postponed until 08/01/06
Action:	Enacted as Amended
Vote:	8 Yes, 0 No, 0 Absent, 1 Abstention

**KENAI PENINSULA BOROUGH  
ORDINANCE 2006-01 (MARTIN) SUBSTITUTE**

**AN ORDINANCE REPEALING KPB CHAPTER 21.26 AND ENACTING KPB  
CHAPTER 21.29, MATERIAL SITE PERMITS**

**WHEREAS,** Goal 6.5, Objective 1 of the 2005 Kenai Peninsula Borough Comprehensive Plan is to ensure that land use regulations adopted by the borough are necessary to control uses that affect public health and safety and address adverse impacts on the rights of adjacent property owners; and

**WHEREAS,** Goal 6.5, Objective 1, Implementation Action A, is to continue to periodically review and update existing regulations to reflect changing conditions and policies in the borough; and

**WHEREAS,** Goal 6.6 of the 2005 comprehensive plan is to reduce land use conflicts outside of the cities; and

**WHEREAS,** Goal 6.6, Objective 1, Implementation Action D, is to improve the land use regulations currently in existence including those related to material sites to minimize the impacts of erosion and flooding of neighboring properties and to minimize conflicts with surrounding land uses; and

**WHEREAS,** Goal 7.1, Objectives 1 and 2, of the 2005 comprehensive plan are to work with other agencies to protect public health and environment, to avoid duplications of other agencies' regulations, and to provide input to federal and state agencies on local conditions and opinions; 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,** a review of the material site ordinance was undertaken in 1998 after a citizen task force comprised of citizens and industry made recommendations; and

**WHEREAS,** the mayor sponsored Ordinance 98-33 after considering the task force recommendations and supplementing the same; and

**WHEREAS,** assembly members sponsored a substitute Ordinance 98-33 which was ultimately adopted in 1999; and

**WHEREAS,** the planning department has been administering Ordinance 98-33, codified as KPB 21.26 as amended, for six 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 department receives comments expressing concerns about dust, noise, and aesthetics which are minimally addressed by the current code; and

**WHEREAS,** there are parcels registered as nonconforming prior existing uses which have not been operated as material sites for a number of years; 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, and unsightliness; and

**WHEREAS,** an assembly subcommittee was formed in 2005 to review the material site code; and

**WHEREAS,** at its regularly scheduled meeting of July 17, 2006, the Planning Commission recommended enactment of the amended ordinance by unanimous consent.

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

**SECTION 1.** KPB 21.26 Material Site Permits is hereby repealed and KPB 21.29, Material Site Permits, is adopted 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 10 feet of a lot line.
- B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood Service Area 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 permit.

### **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 appropriate fee as established by resolution of the planning commission and approved by the borough assembly. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application shall include the following items:

1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
2. Expected life span of the material site;
3. A buffer plan consistent with KPB 21.29.050(A)(2);
4. Reclamation plan consistent with KPB 21.29.060;
5. The depth of excavation;
6. Type of material to be extracted and type of equipment to be used;
7. Any voluntary permit conditions the applicant proposes. Failure to include a proposed voluntary permit condition in the application does not preclude the applicant from proposing or agreeing to voluntary permit conditions at a later time;
8. A site plan and field verification prepared by a professional surveyor licensed and registered in the State of Alaska, including the following information:
  - a. location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
  - b. proposed buffers consistent with KPB 21.29.050(A)(2), or alternate buffer plan;
  - c. identification of all encumbrances, including, but not limited to easements;
  - d. points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to the issuance of the material site permit.
  - e. anticipated haul routes;
  - f. location and depth of test holes, and depth of groundwater, if encountered;
  - g. location of wells of adjacent property owners within 300 feet of the proposed parcel boundary;

- h. location of any water body on the parcel, including the location of any riparian wetland as determined by “Wetland Mapping and Classification of the Kenai Lowland, Alaska” maps created by the Kenai Watershed Forum;
  - i. surface water protection measures for adjacent properties, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence; provide designs for substantial structures; indicate which structures will remain as permanent features at the conclusion of operations, if any;
  - j. location of any processing areas on parcel, if applicable;
  - k. north arrow;
  - l. the scale to which the site plan is drawn;
  - m. preparer's name, date and seal;
  - n. field verification shall include staking the boundary of the parcel at sequentially visible intervals. The planning director may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious.
- B. In order to aid the planning commission or planning director’s decision-making process, the planning director shall provide vicinity, aerial, land use, and ownership maps for each application and may include additional information.

**21.29.040. Standards for sand, gravel or material sites.**

- A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:
- 1. protects against the lowering of water sources serving other properties;
  - 2. protects against physical damage to other properties;
  - 3. minimizes off-site movement of dust;
  - 4. minimizes noise disturbance to other properties;



5. minimizes visual impacts; and
6. provides for alternate post-mining land uses.

**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 Boundaries.** All boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter. Field verification and staking will require the services of a professional land surveyor. Stakes shall be in place at time of application.
  2. **Buffer Zone.** A buffer zone shall be maintained around the excavation perimeter or parcel boundaries. Where an easement exists, a buffer shall not overlap the easement, unless otherwise conditioned by the planning director or planning commission.
    - a. The buffer zone shall provide and retain a basic buffer of:
      - i. 50 feet of undisturbed natural vegetation, or
      - ii. A minimum six-foot earthen berm with at least a 2:1 slope, or
      - iii. A minimum six-foot fence.
    - b. A 2:1 slope shall be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
    - c. The planning commission or planning director shall designate one or a combination of the above as it deems appropriate. The vegetation and fence shall be of sufficient height and density to provide visual and noise screening of the proposed use as deemed appropriate by the planning commission or planning director.
    - 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.
- 3. Processing. In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of adjacent property at the time.
  - 4. Water Source Separation.
    - a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.
    - b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation from the seasonal high water table be maintained.
    - c. All CLUPS shall be issued with a condition which requires that a two-foot vertical separation from the seasonal high water table be maintained.
    - d. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified 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 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains as defined in KPB 21.06. This regulation shall not apply to man-made waterbodies being constructed during the course of the materials extraction activities. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.
  - b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.
7. Fuel Storage. Fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.

water diversion is defined as erosion, flooding, dehydration or draining, or channeling. Not all surface water diversion results in a negative impact.

- e. At its discretion, the planning commission may waive buffer requirements where the topography of the property or the placement of natural barriers makes screening not feasible or not necessary. Buffer requirements shall be made in consideration of and in accordance with existing uses of adjacent property at the time of approval of the permit. There is no requirement to buffer the material site from uses which commence after the approval of the permit.
- 3. Processing. In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of adjacent property at the time.
  - 4. Water Source Separation.
    - a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.
    - b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation from the seasonal high water table be maintained.
    - c. All CLUPS shall be issued with a condition which requires that a two-foot vertical separation from the seasonal high water table be maintained.
    - d. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified 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 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains as defined in KPB 21.06. This regulation shall not apply to man-made waterbodies being constructed during the course of the materials extraction activities. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.
  - b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.
7. Fuel Storage. Fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.

8. Roads. Operations shall be conducted in a manner so as not to damage borough roads as required by KPB 14.40.175 and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
9. Subdivision. Any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit. The planning director may issue a written exemption from the amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a material site and all original permit conditions can be met.
10. Dust control. Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
11. Hours of Operation. Rock crushing equipment shall not be operated between 10 p.m. and 6 a.m.
12. Reclamation.
  - a. Reclamation shall be consistent with the reclamation plan approved by the planning commission or planning director as appropriate in accord with KPB 21.29.060.
  - b. As a condition of issuing the permit, the applicant shall submit a reclamation plan and post a bond to cover the anticipated reclamation costs in an amount to be determined by the planning director. This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.
13. Other permits. Permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives. Any violation of these regulations or permits

reported to or observed by borough personnel will be forwarded to the appropriate agency for enforcement.

14. Voluntary permit conditions. Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission for CLUPs or the planning director for counter permits. Such conditions must be consistent with the standards set forth in KPB 21.29.040(A). Planning commission approval of such conditions shall be contingent upon a finding that the conditions will be in the best interest of the borough and the surrounding property owners. Voluntary permit conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in voluntary permit conditions may be proposed at permit renewal or amendment.
15. Signage. For permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access, whichever is more visible. Sign dimensions shall be no more than 15" by 15" and must contain the following information: the phrase "Permitted Material Site" along with the permittee's business name and a contact phone number.

#### **21.29.060. Reclamation plan.**

- A. All material site permit applications require a reclamation plan.
- B. The applicant shall revegetate with a non-invasive plant species and reclaim all disturbed land upon exhausting the material on-site, or within a pre-determined time period for long-term activities, so as to leave the land in a stable condition. Reclamation must occur for all exhausted areas of the site exceeding five acres before a five-year renewal permit is issued, unless otherwise required by the planning commission. If the material site is one acre or less in size and has been granted a CLUP due to excavation in the water table, reclamation must be performed as specified by the planning commission or planning director in the conditional use or counter permit.
- C. The following measures must be considered in preparing and implementing the reclamation plan, although not all will be applicable to every reclamation plan.
  1. Topsoil that is not promptly redistributed to an area being reclaimed will be separated and stockpiled for future use. This material will be protected from erosion and contamination by acidic or toxic materials and preserved in a condition suitable for later use.

2. The area will be backfilled, graded and recontoured using strippings, overburden, and topsoil to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time. It will be stabilized to a condition that will allow sufficient moisture for revegetation.
  3. Sufficient quantities of stockpiled or imported topsoil will be spread over the reclaimed area to a depth of four inches to promote natural plant growth that can reasonably be expected to revegetate the area within five years. The applicant may use the existing natural organic blanket representative of the project area if the soil is found to have an organic content of 5% or more and meets the specification of Class B topsoil requirements as set by Alaska Test Method (ATM) T-6. The material shall be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by a licensed engineer.
  4. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation shall be removed from the site, buried or burned. Topsoil and other organics will be spread on the backfilled surface to inhibit erosion and promote natural revegetation.
  5. Peat and topsoil mine operations shall ensure a minimum of two inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).
  6. Ponding may be used as a reclamation method as approved by the planning commission.
- D. The plan shall describe the total acreage to be reclaimed each year, a list of equipment (type and quantity) to be used in reclamation, and a time schedule of reclamation measures.

**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.
- 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 21.25.080.

#### **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 21.24.
- B. In addition to the remedies provided in KPB 21.24, 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 21.24, 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.

**SECTION 2.** That KPB 21.24.030(C) is hereby amended as follows:

- C. Fine Schedule. The following fines are the scheduled fines for violations. The scheduled fine for an offense may not be judicially reduced.

<i>Code Chapter Section Citation</i>	<i>Chapter / Section Title</i>	<i>Scheduled Fine</i>
KPB 21.06.040	Failure to obtain a development permit	\$75.00
KPB 21.09.060	Violation of nonconforming use/structure provisions	\$50.00
KPB 21.09.070	Prohibited use	\$100.00
KPB 21.09.080	Violation of development standards	\$50.00
KPB 21.09.090(A)	Violation of home occupation standards	\$100.00
KPB 21.09.090(B)	Sign size violation	\$50.00
KPB 21.09.090(C)	Prohibited home occupations	\$100.00
KPB 21.14.030	Failure to obtain a mobile home park permit	\$75.00
KPB 21.18.050(A)	Failure to obtain fuel storage/logging permit	\$75.00
KPB 21.18.060	Prohibited activity in habitat protection area	\$100.00
KPB 21.18.072	Failure to obtain commercial activity permit	\$75.00
KPB 21.18.080	Failure to obtain a conditional use permit	\$75.00
KPB 21.18.090(D)	Failure to obtain expansion/enlargement conditional use permit	\$100.00
KPB 21.24.050	Violation of or removal of an enforcement order	\$100.00
KPB 21.25.040	Failure to obtain land use permit	[\$75.00] <u>\$300.00</u>
<u>KPB 21.29.050</u>	<u>Violation of conditions</u>	<u>\$300.00</u>
KPB 21.42.060	Violation of nonconforming use/structure provisions	[\$75.00] <u>\$300.00</u>
KPB 21.42.090	Prohibited use	\$100.00
KPB 21.42.100	Violation of development standards	\$50.00
KPB 21.42.110(D)	Failure to obtain a home occupation permit	\$75.00
KPB 21.44.110	Violation of nonconforming use standards	\$75.00
KPB 21.44.130	Failure to obtain a home occupation permit	\$75.00
KPB 21.44.160(A)(B)	Prohibited use	\$100.00
KPB 21.44.160(C)	Violation of development standards	\$50.00
KPB 21.44.170(A)(B)	Prohibited use	\$100.00
KPB 21.44.170(C)	Violation of development standards	\$50.00
KPB 21.44.180(A)(B)	Prohibited use	\$100.00
KPB 21.44.180(C)	Violation of development standards	\$50.00
KPB 21.44.190(A)(B)	Prohibited use	\$100.00
KPB 21.44.190(C)	Violation of development standards	\$50.00

KPB 21.44.200(A)	Prohibited use	\$100.00
KPB 21.44.200(B)	Violation of development standards	\$50.00
KPB 21.44.210(B)(C)	Prohibited use	\$100.00
KPB 21.44.210(D)	Violation of development standards	\$50.00

**SECTION 3.** That KPB 21.24.070 is hereby amended as follows:

**21.24.070. Civil fine.**

The Borough code compliance officer may assess a [\$100.00] \$300.00 civil fine for each violation of this chapter. Notice of a fine shall be served personally or by certified mail on the property owner, lessee, operator, or occupant of the parcel upon which the violation occurs. The fine may be appealed to the Planning Commission pursuant to the terms of KPB 21.20. Each day a violation occurs is a separate violation. Citations for fines may be included in an enforcement order. Appeals from the planning commission's determination shall not be taken to the board of adjustment, but shall proceed to the superior court pursuant to the Alaska Rules of Appellate Procedure, Part 6.

**SECTION 4.** KPB 21.25.030, Definitions, is amended to add the following definitions in alphabetical order:

*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.

*Commercial* means any [USE] 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[, AND INCLUDING ALL ACTIVITIES DIRECTLY SUBSIDIARY].

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

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

[ON-SITE USE MEANS MATERIAL USED ENTIRELY WITHIN THE BOUNDARIES OF THE PARCEL IT WAS EXTRACTED FROM, OR WHEN



DEVELOPMENT OF THE PARCEL REQUIRES DISPOSAL OF THE MATERIAL OFF-SITE THROUGH BARTERING.]

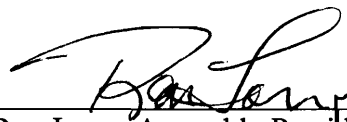
Surface Water means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.

Topsoil means material suitable for vegetative growth.

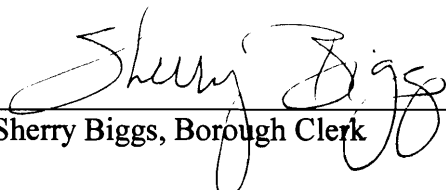
Waterbody means any lake, pond, stream, riparian wetland, or groundwater into which stormwater runoff is directed.

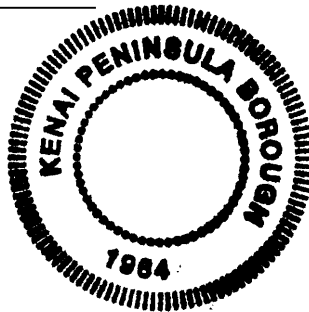
**SECTION 5.** That this ordinance shall take effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 1ST DAY OF AUGUST, 2006.**

  
\_\_\_\_\_  
Ron Long, Assembly President

ATTEST:

  
\_\_\_\_\_  
Sherry Biggs, Borough Clerk



Yes: Chay, Fischer, Germano, Gilman, Martin, Sprague, Superman, Long  
No: None  
Absent: None  
Abstained: Merkes

Introduced by:	Mayor
Substitute Introduced:	01/16/18
Resolution 2018-004 (Mayor)	See Original for Prior History
Action:	Adopted
Vote:	8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2018-004  
(MAYOR) SUBSTITUTE**

**A RESOLUTION ESTABLISHING A MATERIAL SITE WORK GROUP**

**WHEREAS,** KPB 21.25.040(A)(2) requires a permit for the commencement of commercial sand, gravel or material sites within the rural district of the Kenai Peninsula Borough; and

**WHEREAS,** KPB 21.29 provides for a permit process to extract material from the ground; and

**WHEREAS,** with the exception of one minor change relating to floodplain permits, the material site code was last updated in 2006; and

**WHEREAS,** the assembly, administration, planning department and the planning commission have recognized that certain provisions of the material site ordinance can be clarified for the operators, public, and staff; and;

**WHEREAS,** the public has expressed many concerns about dust, noise, water, and negative secondary impacts of material sites; and

**WHEREAS,** it is the intent of the assembly and administration to involve the public and industry in a collaborative discussion designed to incorporate possible changes to the material site code;

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

**SECTION 1.** That a work group is established for the purpose of examining the current material site permit process and potentially recommending amendments to the material site code provisions.

**SECTION 2.** That the work group shall consist of at least two assembly members; two planning commissioners; two members of the public; and, two material site industry members. The group shall elect from among its members a chair and a vice-chair who may serve in the absence of the chair. The two members of the assembly shall be appointed by the assembly. The remaining members shall be appointed by the mayor.

**SECTION 3.** That each meeting time and place shall be advertised, open to the public and subject to the Open Meetings Act.


**SECTION 4.** The material site work group shall have no authority to act on behalf of the assembly or the administration or communicate on the borough's behalf other than to make recommendations to the planning commission, administration and assembly.

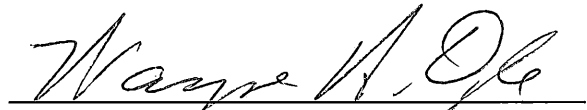
**SECTION 5.** The work group shall provide a final report to the planning commission, administration and assembly by June 5, 2018, and then discontinue unless extended by the assembly.

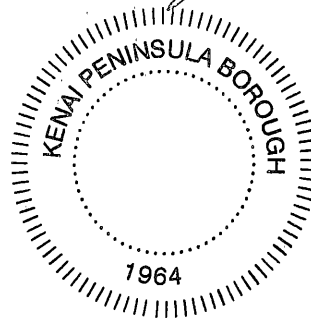
**SECTION 6.** That this resolution shall take effect immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF JANUARY, 2018.**

ATTEST:

  
John Blankenship, MMC, Borough Clerk

  
Wayne H. Ogle, Assembly President



Yes: Bagley, Blakeley, Carpenter, Dunne, Fischer, Hibbert, Smalley, Ogle  
No: None  
Absent: Cooper

Introduced by: Ogle  
Date: 05/15/18  
Action: Adopted as Amended  
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2018-025**

**A RESOLUTION EXTENDING THE DEADLINE FOR SUBMISSION OF THE  
MATERIAL SITE WORKING GROUP'S FINAL REPORT**

**WHEREAS,** a material site working group ("MSWG") was formed by Resolution 2018-004 on January 16, 2018; and

**WHEREAS,** a final report is due to the administration, planning commission and assembly by June 5, 2018; and

**WHEREAS,** the MSWG needs additional time to consider proposed revisions to the material site code, explore additional revisions, and hear and consider public testimony regarding the same; and

**WHEREAS,** the summer months are the most active for material site operators who may not have time to be involved in the public process during that time frame; and

**WHEREAS,** the planning commission considered this resolution at its May 14, 2018 meeting and recommended approval by majority consent;

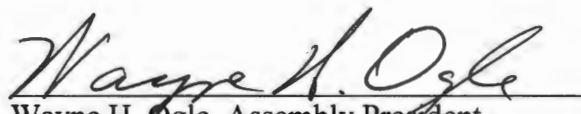
**NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:**

**SECTION 1.** The deadline for the final report of the MSWG is extended to April 30, 2019. Meetings of the MSWG are suspended from June 1, 2018 through September 30, 2018.

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



**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS  
15TH DAY OF MAY, 2018.**

  
Wayne H. Ogle, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



Yes: Bagley, Blakeley, Carpenter, Cooper, Dunne, Fischer, Hibbert, Smalley, Ogle  
No: None  
Absent: None

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Bill Elam, Assembly Member *BE*

**DATE:** January 18, 2022

**SUBJECT:** Elam Amendment #1 to Ordinance 2021-41, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures (Johnson, Mayor)

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

➤ Amend Section 3, KPB 21.29.030(A)(9)(h), as follows:

**21.29.030. Application procedure.**

...

- h. Location of any water body on the parcel, including the location of any riparian wetland as determined by **best available data** [~~**"WETLAND MAPPING AND CLASSIFICATION OF THE KENAI LOWLAND, ALASKA" MAPS CREATED BY THE KENAI WATERSHED FORUM**~~];

Your consideration of this amendment is appreciated.