### Kenai Peninsula Borough

144 North Binkley Street Soldotna, AK 99669



**Meeting Agenda** 

Tuesday, April 19, 2022

6:00 PM

Meeting ID: 884 7373 9641 Passcode: 671108

Betty J. Glick Assembly Chambers

### **Assembly**

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

#### CALL TO ORDER

#### PLEDGE OF ALLEGIANCE

#### INVOCATION

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

[Clerk's Note: The invocation will be offered by Keith Hamilton.]

#### **ROLL CALL**

#### **COMMITTEE REPORTS**

#### 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-4110 – 04/05/22 Assembly Meeting Minutes Resolution 2022-026 – Ninilchik Fire Station Block Grant Appln. Resolution 2022-024 – Classifying Land in Diamond Ridge Resolution 2022-025 – Approving Appln. Period Kalifornsky APC Ordinance 2021-19-48 – Suppl Funding Air OEM Server Room KPB-4103 – SBCFSA Appointment

#### ACTION ITEMS ELIGILE TO BE ADDED TO THE CONSENT AGENDA:

Ordinance 2021-19-40 – CPH Enterprise Resource System Appropriation

Ordinance 2021-19-41 - SPH Pulmonary Purchase Appropriation

Ordinance 2021-19-42 – SPH Operating Cash Appropriation

Ordinance 2021-19-43 – Japanese Creek Feasibility Study

Ordinance 2021-19-44 – SPH Security Upgrade Project Phase 1

Ordinance 2021-19-45 – RSA Appropriation

Ordinance 2021-19-46 – Grantee Amendment

Ordinance 2021-19-47 – Purchase of Loader and Skid Steer Homer Transfer Facility

Ordinance 2022-06 – Cooper Landing Land Sale

Ordinance 2022-09 – Lease for Anchor Point Food Pantry

Ordinance 2022-07 – Apportionment Plan

#### **APPROVAL OF MINUTES**

\*1. <u>KPB-4110</u> April 5, 2022 Regular Assembly Meeting Minutes
<u>Attachments:</u> 040522 Regular Assembly Meeting Minutes

#### COMMENDING RESOLUTIONS AND PROCLAMATIONS

#### PRESENTATIONS WITH PRIOR NOTICE

(20 minutes total)

1. <u>KPB-4119</u> C-PACE Program, Peter Crimp and Resilience and Security Advisory Committee (RSAC) Building Subcommittee Chair Bretwood "Hig" Higman, PhD (10 minutes)

Attachments: CPACE RSAC Presentation

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

(3 minutes per speaker; 20 minutes aggregate)

#### ITEMS NOT COMPLETED FROM PRIOR AGENDA

#### PUBLIC HEARINGS ON ORDINANCES

(Testimony limited to 3 minutes per speaker)

#### Ordinances referred to Finance Committee

- 1. <u>2021-19-40</u> An Ordinance Appropriating Funding from the Central Peninsula Hospital Plant Replacement and Expansion Fund for the Replacement of Central Peninsula Hospital's Enterprise Resource Planning Systems for Human Resources, Payroll, Supply Chain, Accounts Payable, and General Finance Functions (Mayor)
  - Attachments: Ordinance 2021-19-40
    Memo
    CPGH Inc. Board Resolution
- 2. <u>2021-19-41</u> An Ordinance Appropriating Funds from the South Peninsula Hospital Service Area Fund Balance for Purchase of Replacement Pulmonary Function Diagnostic Equipment (Mayor)

 Attachments:
 Ordinance 2021-19-41

 Memo
 South Peninsula Hospital Resolution 2022-04

 Service Area Board Resolution 2022-05

3.	<u>2021-19-42</u>	An Ordinance Appropriating Funding from the South Peninsula Hospital Plant Replacement and Expansion Fund to Replenish South Peninsula Hospital's Operating Cash (Mayor)
	<u>Attachments:</u>	Ordinance 2021-19-42         Memo         South Peninsula Hospital Resolution 2022-06         Service Area Board Resolution 2022-04
2.	<u>2021-19-43</u>	An Ordinance Redirecting Excess Funds Appropriated for the U.S. Army Corps of Engineers Japanese Creek Feasibility Study to Complete Flood Hazard and Alternatives Analyses, and Design Plans for Flood Risk Mitigation Projects (Mayor, Ecklund)
	<u>Attachments:</u>	Ordinance 2021-19-43 Memo Japanese Creek Information Advisory Board Recommendations
5.	<u>2021-19-44</u>	An Ordinance Appropriating Funds from the South Kenai Peninsula Hospital Service Area Fund Balance to Fund the SPH Phase I Security Upgrade Project (Mayor)
	<u>Attachments:</u>	Ordinance 2021-19-44 Memo South Peninsula Hospital Board Resolution 2022-05 Service Area Board Resolution 2022-03
6.	<u>2021-19-45</u>	An Ordinance Appropriating Funds from the Road Service Area Operating Fund Balance for Snow Removal, Sanding and Road Maintenance (Mayor)
	<u>Attachments:</u>	Ordinance 2021-19-45 Memo
7.	<u>2021-19-46</u>	An Ordinance Amending the Grantee for the Homeless Shelter Funds Related to the State of Alaska Healthy and Equitable Communities Program (Mayor)
	<u>Attachments:</u>	Ordinance 2021-19-46 <u>Memo</u> <u>Reference Copy O2021-19-32</u>
0	2021 10 15	

8. <u>2021-19-47</u> An Ordinance Appropriating Funds from the Equipment Replacement Fund for Purchase of a Loader and Skid-Steer for the Homer Transfer Facility (Mayor) Attachments: Ordinance 2021-19-47 Memo

Ordinances referred to Lands Committee

- 9. 2022-06 An Ordinance Authorizing the Negotiated Sale of 183.234 Acres in Cooper Landing as Part of the Sterling Highway Mile Post 45-60 Realignment Project to the State of Alaska Department of Transportation and Public Facilities for a Negotiated Amount Over Appraised Value (Mayor)
  - Attachments:Ordinance 2022-06Amendment MemoMemoRight Of Way Location MapsMOA Phase 1BMOA Phase 2-6KPB PV Phase 1BKPB PV Phase 1BKPB PV Phase 2-6QCD Phase 1BQCD Phase 2-6
- 10. 2022-09 An Ordinance Authorizing a Negotiated Lease at Less Than Fair Market Value of Certain Real Property Containing 3.5 Acres More or Less to the Anchor Point Food Pantry for a Food Pantry and Other Community Uses (Mayor)

 Attachments:
 Ordinance 2022-09

 Memo
 Lease

 Lease Application
 Development Plan & Story

 APFP Maps
 Reference Copy Resolution 2021-075

Ordinances referred to Legislative Committee

- 11. <u>2022-07</u> Adopting the 2022 Kenai Peninsula Borough Assembly and Board of Education Apportionment Plans and Submitting the Apportionment Plans to the Voters (Johnson, Elam)
  - Attachments:
     Ordinance 2022-07

     Reapportionment Committee Final Report

     Reference Copy Resolution 2022-003

#### **UNFINISHED BUSINESS**

#### **NEW BUSINESS**

1. Resolutions

Resolutions referred to Finance Committee

\*a. 2022-026 A Resolution Authorizing the Application of Community Development Block Grant for Ninilchik Fire Station COVID Safety Improvements (Mayor) <u>Attachments:</u> Resolution 2022-026

Memo

Resolutions referred to Lands Committee

 \*b.
 2022-024
 A Resolution Classifying Certain Parcels of Borough Owned Land in the Diamond Ridge Area (Mayor)

 Attachments:
 Resolution 2022-024

Staff Report

Resolutions referred to Policies and Procedures Committee

- \*c.
   2022-025
   A Resolution Providing a 30-Day Application Period Prior to Inactivating the Kalifornsky Advisory Planning Commission (Mayor)

   Attachments:
   Resolution 2022-025

   Memo
- 2. Ordinances for Introduction

Ordinances for Introduction and referred to Finance Committee

\*a. <u>2021-19-48</u> An Ordinance Appropriating Supplemental Funding to Complete the Air Conditioner Unit Replacement Project Located in the Emergency Response Center Server Room (Mayor) (Hearing on 05/03/22)

<u>Attachments:</u> Ordinance 2021-19-48 <u>Memo</u>

Ordinances for Introduction and referred to the Policies and Procedures Committee

3. Other

Other items referred to Policies and Procedures Committee

*a.	<u>KPB-4103</u>	Confirming an Appointment to the Seward-Bear Creek Flood Service Area Board (Mayor)
		Andy Bacon, Seat F, Term to Expire October, 2022
	<u>Attachments:</u>	SBCFSA Appointment - Seat F

#### **MAYOR'S REPORT**

Mayor's Report Cover Memo

<u>KPB-4104</u> 041922 Mayor's Report Cover Memo

Attachments: 041922 Mayor Report Memo

- 1. Assembly Requests/Responses None.
- 2. Agreements and Contracts
- a. <u>KPB-4105</u> Authorization to Award a Contract for RFP22-020 West Homer Elementary Water Infiltration to K+A designstudios, Kenai, AK
   <u>Attachments:</u> <u>Auth to Award KA designstudios</u>
- b. <u>KPB-4106</u> Authorization to Award a Contract for ITB22-040 Purchasing & Contracting Storefront Remodel to Eberline Building, Inc., Soldotna, AK

Attachments: Auth to Award Eberline Building Inc

c. <u>KPB-4107</u> Authorization to Award a Contract for RFP22-021 Access Controls to Johnson Controls, Anchorage, AK

Attachments: Auth to Award Johnson Controls

d. <u>KPB-4109</u> Authorization to Award a Contract for ITB22-045 Central Peninsula Landfill Pond Liner Materials Purchase to Northwest Linings and Geotextile Products, Inc., Kent, WA

Attachments: Auth to Award Northwest Linings

e. <u>KPB-4108</u> Sole Source Waiver to Crane Equipment Manufacturing Corporation, LLC

Attachments: Sole Source Waiver Crane Mfg Corp

#### 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) (Referred to Policies and Procedures Committee) [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]

- Ordinance 2021-41 Attachments: 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)
- 2. 2022-08 Ordinance Amending KPB 5.12.116 to Broaden Economic An Development Property Tax Exemption for Independent Power Producers (Johnson, Cox) (Hearing on 05/03/22) (Referred to Policies and Procedures Committee)

Attachments: Ordinance 2022-08
Memo

#### INFORMATIONAL MATERIALS AND REPORTS

#### ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS

Regular Assembly Meeting
 Betty J. Glick Assembly Chambers
 Borough Administration Building
 Remote participation available through Zoom
 Meeting ID: 884 7373 9641 Passcode: 671108

Material Site Assembly Subcommittee - Ordinance 2021-41
 Betty J. Glick Assembly Chambers
 Borough Administration Building
 Remote participation available through Zoom
 Meeting ID: 884 7373 9641 Passcode: 671108

#### ADJOURNMENT

The next meeting of the Kenai Peninsula Borough Assembly will be held on May 3, 2022, at 6:00 P.M. in the Borough Assembly Chambers, Soldotna, Alaska.

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

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

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

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### Kenai Peninsula Borough

### **Meeting Minutes - Draft**

#### Assembly

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

Tuesday, April 5, 2022

6:00 PM

Betty J. Glick Assembly Chambers

#### Meeting ID: 884 7373 9641 Passcode: 671108

#### CALL TO ORDER

#### PLEDGE OF ALLEGIANCE

#### **INVOCATION**

The invocation was given by Leslie Rohr.

#### **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: Charlie Pierce, Borough Mayor Aaron Rhoades, Chief of Staff Sean Kelley, Borough Attorney Brandi Harbaugh, Finance Director Johni Blankenship, Borough Clerk Michele Turner, Deputy Borough Clerk

#### **COMMITTEE REPORTS**

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

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

Assembly Member Chesley stated the Policies and Procedures Committee met and

discussed its agenda items.

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

#### APPROVAL OF AGENDA AND CONSENT AGENDA

Hibbert moved to approve the Agenda and Consent Agenda.

Copies have been made available to the public, Borough Clerk Johni Blankenship noted by title only the resolutions and ordinances on the consent agenda.

### <u>KPB-4057</u> March 1, 2022 Regular Assembly Meeting Minutes approved.

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

<u>2021-19-39</u>	An Ordinance Appropriating \$200,000 in the School Maintenance Fund for Snow Removal and Sanding (Mayor)
	This Budget Ordinance was enacted.
<u>2022-04</u>	An Ordinance Adopting the Updated 2022 Kenai Peninsula Borough Community Wildfire Protection Plan (Mayor)
	[Clerk's Note: Brenda Ahlberg, Emergency Manager will give a 15-minute presentation during the Policies and Procedures Committee] This Ordinance was enacted.

New Business

2022-017 A Resolution Approving Twenty-Six Unincorporated Communities for Participation in the State's Fiscal Year 2023 Community Assistance Program (Mayor)

> [Clerk's Note: President Johnson passed the gavel to Vice President Hibbert and declared a possible conflict with Resolution 2022-017 as he is President of the Kasilof Regional Historical Association. After advice from legal, Vice President Hibbert ruled a conflict did exist. Vice President Hibbert returned the gavel to President Johnson and he did not participate in the debate or vote on Resolution 2022-017.]

[Clerk's Note: Vice President Hibbert declared a possible conflict as he is the owner of Alaska Cab who provides transportation for several of the communities in which these funds may be used. Borough Attorney Kelley advised a conflict did exist. Vice President Hibbert did not participate in the debate or vote on Resolution 2022-017.]

This Resolution was adopted.

<u>2022-018</u> A Resolution Authorizing the Sole Source Acquisition of a PittBoss Floating Evaporator from Resource West, Inc. for the Central Peninsula Landfill (Mayor)

This Resolution was adopted.

2022-019 A Resolution Authorizing One Full-Time Lead Landfill Operator Position and Three Full-Time Laborer/Operator Positions at the Homer Transfer Facility (Mayor)

This Resolution was adopted.

- 2022-020 A Resolution Approving Memorandum of Understanding for Sharing Geographic Data and Imagery with the Cities of the Borough (Mayor) This Resolution was adopted.
- 2022-021 A Resolution Adopting the Siren Warning System Memorandum of Agreement with the City of Homer and Authorizing the Mayor to Sign Substantially Similar Agreements with the City of Seldovia and the City of Seward (Mayor)

This Resolution was adopted.

2022-022 A Resolution Supporting Inclusion of Continuous Lighting for the Sterling Highway Safety Corridor Improvements MP 82.5-94 Project and the Kenai Spur Highway Rehabilitation Project (Mayor, Hibbert, Cox, Bjorkman)

This Resolution was adopted.

2022-023 A Resolution Supporting HB 367 "An Act Relating to the Planning Commission Apportionment Requirement for First and Second Class Boroughs" (Johnson, Hibbert, Elam)

This Resolution was adopted.

2021-19-40 An Ordinance Appropriating Funding from the Central Peninsula Hospital Plant Replacement and Expansion Fund for the Replacement of Central Peninsula Hospital's Enterprise Resource Planning Systems for Human Resources, Payroll, Supply Chain, Accounts Payable, and General Finance Functions (Mayor) (Hearing on 04/19/22)

[Clerk's Note: Assembly Member Elam disclosed he works at Central Peninsula Hospital but was not directly working on this project.]

This Budget Ordinance was introduced and set for public hearing.

- 2021-19-41 An Ordinance Appropriating Funds from the South Peninsula Hospital Service Area Fund Balance for Purchase of Replacement Pulmonary Function Diagnostic Equipment (Mayor) (Hearing on 04/19/22) This Budget Ordinance was introduced and set for public hearing.
- 2021-19-42 An Ordinance Appropriating Funding from the South Peninsula Hospital Plant Replacement and Expansion Fund to Replenish South Peninsula Hospital's Operating Cash (Mayor) (Hearing on 04/19/22) This Budget Ordinance was introduced and set for public hearing.
- 2021-19-43 An Ordinance Redirecting Excess Funds Appropriated for the U.S. Army Corps of Engineers Japanese Creek Feasibility Study to Complete Flood Hazard and Alternatives Analyses, and Design Plans for Flood Risk Mitigation Projects (Mayor, Ecklund) (Hearing on 04/19/22)

This Budget Ordinance was introduced and set for public hearing.

2021-19-44 An Ordinance Appropriating Funds from the South Kenai Peninsula Hospital Service Area Fund Balance to Fund the SPH Phase I Security Upgrade Project (Mayor) (Hearing on 04/19/22)

This Budget Ordinance was introduced and set for public hearing.

- 2021-19-45 Ordinance Appropriating Funds from the Road Service Area An Fund Balance for Removal, Sanding Operating Snow and Road Maintenance (Mayor) (Hearing on 04/19/22) This Budget Ordinance was introduced and set for public hearing.
- 2021-19-46 An Ordinance Amending the Grantee for the Homeless Shelter Funds Related to the State of Alaska Healthy and Equitable Communities Program (Mayor) (Hearing on 04/19/22)

This Budget Ordinance was introduced and set for public hearing.

<u>2021-19-47</u> An Ordinance Appropriating Funds from the Equipment Replacement Fund for Purchase of a Loader and Skid-Steer for the Homer Transfer Facility (Mayor) (Hearing on 04/19/22)

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

2022-06 An Ordinance Authorizing the Negotiated Sale of 183.234 Acres in Cooper Landing as Part of the Sterling Highway Mile Post 45-60 Realignment Project to the State of Alaska Department of Transportation and Public Facilities for a Negotiated Amount Over Appraised Value (Mayor) (Hearing on 04/19/22) This Ordinance was introduced and set for public hearing.

This Ordinance was introduced and set for public hearing.

2022-09 An Ordinance Authorizing a Negotiated Lease at Less Than Fair Market Value of Certain Real Property Containing 3.5 Acres More or Less to the Anchor Point Food Pantry for a Food Pantry and Other Community Uses (Mayor) (Hearing on 04/19/22)

This Ordinance was introduced and set for public hearing.

**KPB** 2022-08 An Ordinance Amending 5.12.116 to Broaden Economic Development Property Tax Exemption for Independent Power Producers (Johnson, Cox) (Hearing on 05/03/22)

This Ordinance was introduced and set for public hearing.

- 2022-07 Adopting the 2022 Kenai Peninsula Borough Assembly and Board of Education Apportionment Plans and Submitting the Apportionment Plans to the Voters (Johnson, Elam) (Hearing on 04/19/22) This Ordinance was introduced and set for public hearing.
- KPB-3993Approving the Issuance of a Letter of Non-Objection to the Marijuana<br/>Control Board Regarding the New Standard Marijuana Cultivation<br/>Facility, License No. 29604 filed by Redoubt Reefer, Subject to the<br/>Standard Conditions.

[Clerk's Note: Standard Conditions for Commercial Marijuana Facilities as follows: 1. The marijuana establishment shall conduct their are operation consistent with the site plan submitted to the Kenai Peninsula Borough. 2. There shall be no parking in the borough rights-of-way by the marijuana establishment. 3. The generated marijuana establishment shall remain current in all Kenai Peninsula Borough tax obligations consistent with KPB 7.30.020 (A).] approved.

<u>KPB-4061</u> Requesting Formal Assembly Protest to the Renewal of a Marijuana License due to Unpaid Taxes for Hunter Greens and Purples, LLC dba

Alaska Jane, License No. 11617 approved.

<u>KPB-4040</u> Confirming an Appointment to the Planning Commission (Mayor)

Charlene Tautfest, City of Soldotna, Term Expires July 31, 2024 confirmed.

Approval of the Agenda and Consent Agenda

President Johnson called for public comment.

**Larry Smith**, Soldotna spoke in opposition to Resolution 2022-019 and Ordinance 2021-19-47.

Debbie Cary, Ninilchik spoke in support of Ordinance 2022-07.

Leslie Rohr, Soldotna spoke in support of Ordinance 2021-19-46.

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

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

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

#### COMMENDING RESOLUTIONS AND PROCLAMATIONS

1. <u>KPB-4058</u> Mayor's Proclamation Declaring April 2022 as "Safe Digging Month" (Mayor)

[Clerk's Note: The Mayor presented the proclamation to Ryan Pierce.]

#### PRESENTATIONS WITH PRIOR NOTICE

1. <u>KPB-4059</u> TO BE RESCHEDULED Federal Emergency Management Agency (FEMA) Flood Plain Presentation (10 minutes)

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

President Johnson called for public comment with none being offered.

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

#### PUBLIC HEARINGS ON ORDINANCES

<u>2022-05</u>	An Ordinance Amending KPB 2.34, Risk Management Office, to
	Change the Title of the Claims Manager to Risk Manager and Clarify
	the Current Operations of the Office of Risk Management (Mayor)
	Chesley moved to enact Ordinance 2022-05.

President Johnson called for public comment with none being offered.

The motion to enact Ordinance 2022-05 carried by the following vote:

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

#### **UNFINISHED BUSINESS**

#### 1. Postponed Items

2022-02 An Ordinance Enacting KPB 2.40.110 and 2.40.120 Authorizing the Planning Commission to Adopt Bylaws and Defining Quorum (Chesley)

[Postponed from the 03/01/22 meeting.]

[Clerk's Note: The motion to enact was on the floor from the March 1, 2022 meeting.]

President Johnson called for public comment with none being offered.

Cox moved to amend Ordinance 2022-02 as follows:

Section 2 to read:

#### <u>2.40.120. - Quorum.</u>

A majority of the members of the commission who have been appointed by the mayor and confirmed by the assembly shall constitute a quorum, except in no case may a guorum consist of fewer than five commission members. All commission actions shall be by vote of a majority of the members of the commission who are present and voting. No hearing may be held or decision made in the absence of a quorum, except that a member disqualified by law from voting on a question may be considered present for purposes of constituting a quorum."

The motion to amend Ordinance 2022-02 carried by the following vote:

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

The motion to enact Ordinance 2022-02 as amended carried by the following vote:

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

#### **NEW BUSINESS**

3. Other

<u>KPB-4041</u>	Petition	to	Vacate	а	Portion	of	Paper	Birch	Lane	and	Associated
	Utility E	aser	nents								

[Clerk's Note: The Planning Commission approved the referenced petition to vacate at its March 21, 2022 meeting by unanimous consent.]

Cox moved to veto the Planning Commission's actions of March 21, 2022.

President Johnson called for public comment with none being offered.

Assembly Members Bjorkman, Elam, Hibbert and Ecklund spoke in support of vetoing the Planning Commission's actions.

The motion to veto the Planning Commission's actions of March 21, 2022 carried by the following vote:

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

#### **MAYOR'S REPORT**

- 1. Assembly Requests/Responses
- 2. Agreements and Contracts
- **a.** <u>KPB-4043</u> Sole Source Multiple Sites Water Control System Upgrade to TecPro.
- **b.** <u>KPB-4044</u> Authorization to Award a Contract for RFP22-013 Radio Communications and Technical Services to Arcticom, Anchorage, AK.
- **c.** <u>KPB-4045</u> Authorization to Award a Contract for RFP22-015 Banking Services to First National Bank of Alaska, Anchorage, AK.
- **d.** <u>KPB-4046</u> Authorization to Award a Contract for ITB22-0029 Calcium Chloride Application 2022, North Region to Fowlers Dirt Works, Kasilof, AK.
- e. <u>KPB-4047</u> Authorization to Award a Contract for ITB22-030 Calcium Chloride Application 2022, East Region to Metco Alaska, LLC.
- f. <u>KPB-4048</u> Authorization to Award a Contract for ITB22-0028 Calcium Chloride Application 2022, South Region to Moore and Moore Services, Inc., dba Quick Draw H2O Service.
- g. <u>KPB-4049</u> Authorization to Award a Contract for ITB22-032 Sea Otter Community Center Touchless Fixture Upgrades, DHW Minor Remodel

to Eberline Building, Inc. Soldotna, AK.

- h. <u>KPB-4050</u> Authorization to Award a Contract for ITB22-024 Buoy Avenue, West Region, Unit 1, FY22 Gravel Road Projects, to Peninsula Construction, Inc., Kenai, AK.
- 3. Other
- a. <u>KPB-4051</u> Revenue-Expenditure Report February 2022
- b. <u>KPB-4052</u> Budget Revisions February 2022
- c. <u>KPB-4053</u> Certification of the 2021 Real Property Supplemental Assessment Roll
- **d.** <u>KPB-4054</u> Final Project Update 2022 Kenai Peninsula Borough Community Wildfire Protection Plan
- e. <u>KPB-4055</u> School District and Road Capital Projects FY2023

[Clerk's Note: The administration gave a 30-minute presentation during Policies and Procedures Committee.]

f. <u>KPB-4056</u> Update on Siren Warning System

#### PUBLIC COMMENTS AND PUBLIC PRESENTATIONS

President Johnson called for public comment.

**Jen Miller**, Solar Farm thanked the assembly for the introduction of Ordinance 2022-08.

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

#### **ASSEMBLY COMMENTS**

Assembly Member Elam thanked everyone for their public comments and wished everyone a good evening.

Assembly Member Cox stated he was happy to see the schools were able to conduct proms and get back to somewhat 'normal' business. Mr. Cox reminded everyone of the soccer jamboree at Kenai High School on Saturday, April 9, 2022. He wished everyone a good evening.

Assembly Member Tupper stated he was looking forward to traveling to Seldovia on

Thursday, April 7, 2022. He thanked everyone for an efficient meeting.

Assembly Member Derkevorkian thanked everyone for a productive meeting. He shared his concerns regarding the lack of communication with the hospital board and administration regarding a constituent's complaint.

Assembly Member Bjorkman thank everyone for joining the meeting on all platforms available. He reminded everyone to fire wise their properties and apply for a burn permit through the Division of Forestry. Mr. Bjorkman thanked Sam Tauriainen, Jesse Spurgeon and Evelyn Jackson at Nikiski Fire Department for the great care they recently gave him. He thanked all the first responders for their service and dedication to excellence of care they provide the residents of peninsula. Mr. Bjorkman stated he was excited the Assembly Material Site Subcommittee had begun their work and encourage public participation. He encouraged public participation with the budget process and service area matters as well. He wished everyone a good evening.

Assembly Member Chesley thanked everyone for a great meeting. He reminded everyone of the winter king salmon derby on Sunday, April 10, 2022. He also stated the shorebirds were returning to Homer and the Kachemak Bay Shorebird Festival was coming soon. He invited everyone to come enjoy Homer activities. Mr. Chesley stated to be mindful that there are many in our community that are less fortunate than we are and to practice humility and gratitude for the many blessings we had.

Assembly Member Ecklund thanked the administration and staff for all the work to prepare for the meetings. She stated the Seward schools were experiencing a staffing crisis. She stated she looked forward to working with the school district and administration to hopefully solve that issue. Ms. Ecklund stated she was working with the City of Seward, KPB Land Management Division and Community Development regarding teacher housing. She wished everyone a good evening.

Assembly Member Hibbert wished everyone a good week.

President Johnson thanked the Clerk's Office for the subcommittee materials. He thanked Debbie Cary for chairing the Reapportionment Committee and presenting the committee's final report. He thanked Leslie Rohr for her work with the homeless. Mr. Johnson appreciated everyone keeping the Ukrainians in their prayers.

#### INFORMATIONAL MATERIALS AND REPORTS

#### ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS

None.

1. April 19, 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

2. April 19, 2022 Assembly Subcommittee

Time: TBD Ordinance 2021-41 Work Session

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 7:51 p.m.

I certify the above represents accurate minutes of the Kenai Peninsula Borough Assembly meeting of April 5, 2022.

Johni Blankenship, MMC, Borough Clerk

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

# C-Pace for the Kenai Peninsula Borough DRAFT 4-4-22

COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY

## What is C-PACE? Commercial Property Assessed Clean Energy

- Program was enabled by the Alaska Legislature in 2017.
- Provides affordable, long-term financing to commercial building owners for energy efficiency and renewable energy systems.
- Loan is secured by a lien on the property and repaid with taxes.

### ► Goals:

- Improve owner's bottom line
- Modernize buildings and improve the tax base
- Reduce greenhouse gases
- ► It is <u>Optional</u>.

# How Does C-PACE Work?

### Building owners choose

- a professional to perform an energy audit.
- a private capital provider that finances up to 100% of all costs.
- The Borough enters into contracts with the owner and the lender.
- Owners repay debt through a special assessment that is secured by a lien on the property by the Borough.
- Debt can be transferred if the owner sells the property.

# How does the Borough opt in? AS 29.55.100-165 gives steps:

Adopt a <u>Resolution of Intent</u> that

includes a finding of valid public purpose and

describes how the Borough will provide and service third-party financing.

Prepare a Program Report that

details how the Borough's C-PACE program would function

and pass a non-codified Ordinance Approving the Program Report.

Hold a public hearing on the proposed program, and adopt a codified <u>Ordinance Establishing C-PACE</u>

and the terms of the program in the Borough.

# What's in the Program Report? The details of the proposed Borough program:

- Program Goals
- Type of projects that are eligible
- Application process
- Capital provider responsibilities and <u>Sample Contract</u>
- Sample Contract with the owner
- How Borough ensures payment and a <u>Sample Lien</u>
- Audit requirements: estimation of energy and cost savings and emission reductions; how impacts will be verified
- How the Borough will market the program
- Quality assurance and anti-fraud measures
- Insurance requirements

# Costs and Benefits

## ► Benefits:

- Save owner money immediately
- Improve Borough property values
- Improve market competitiveness
- Create construction and engineering jobs

### ► Costs:

- Staff or contractual expenses for administering the program
  - (can be reimbursed through fees)

# **C-PACE** Status

### Nationwide

- 38 states, including Alaska, have enabling legislation
- 2,560 commercial projects, \$2.1 billion investment, 24,000 job-years\*
- Alaska
  - Anchorage: Program is in place. First project is in the pipeline.
  - Mat-Su Borough: Resolution of Intent passed unanimously on Feb 5
  - Fairbanks and Juneau: Programs are in development
- ► HB227
- Alaska Green Bank

\*Source: PACE Nation

## Case Studies from Detroit, Michigan





Detroit luxury boutique hotel finances phase two retrofit with PACE

Heating and power system upgrades LED Lighting

 Amount Financed:
 \$908,696

 Net Savings over 25 years:
 \$1,387,869

HVAC, Elevator upgrades, DHW LED Lighting

 Amount Financed:
 \$3,500,000

 Net Savings over 25 years:
 \$801,825

# Example

Based on an AEA-supported energy audit of an Anchorage fitness center (2014) with a current appraised value of \$11.2 million

	Financed Costs	<u>(1000\$)</u>
Retrofits Proposed by Audit	Audit	10.0
<ul> <li>HVAC upgrades</li> </ul>	Energy Measures	1,982.5
LED lighting	Application Fee	0.2
<ul> <li>Microturbines (2)</li> </ul>	Closing Fee (0.8%)	15.9
<ul> <li>Upgrade fan and pump motors</li> </ul>	Total	1,998.6
<ul> <li>New windows, sealing</li> </ul>	Annual Costs & Savings	
<ul> <li>Pool cover</li> </ul>	Debt Service	(160.4)
	Gross Cost Savings	291.3
	Net Cost Savings	130.9

# EXTRA SLIDES

# Detail on Energy Efficiency Measures

			Simple	
Measure	Cost	Savings	Payback	SIR
Upgrade fan and pump motors	15,000	11,800	1.3	7.9
Seal windows and doors	3,100	3,900	0.8	12.6
Upgrade shower heads	1,100	1,200	0.9	10.9
Install Capstone microturbines (2)	334,000	102,100	3.3	3.1
Destratification fans in tennis room	5,250	1,500	3.5	2.9
Heat recovery ventilation in pool room	60,000	16,200	3.7	2.7
HVAC and DHW upgrades	1,240,750	125,295	9.9	2.0
Lighting retrofits	200,000	26,595	7.5	0.8
Swimming pool cover	60,000	2,200	27.3	0.4
Lavatoryelectronic sensors	30,000	400	75.0	0.1
Windowsreplace with triple pane	33,345	77	433.1	0.04
	1,982,545	291,267	6.8	1.5
HVAC Upgrades				
set back thermostats/DDC				
VFDs on fans and heat pumps				
CO2 detectors to control ventilation				
New insulated DHW tanks				
HW circ pump operation only daytime				

Introduced by:	Mayor
Date:	04/05/22
Hearing:	04/19/22
Action:	
Vote:	

#### KENAI PENINSULA BOROUGH ORDINANCE 2021-19-40

#### AN ORDINANCE APPROPRIATING FUNDING FROM THE CENTRAL PENINSULA HOSPITAL PLANT REPLACEMENT AND EXPANSION FUND FOR THE REPLACEMENT OF CENTRAL PENINSULA HOSPITAL'S ENTERPRISE RESOURCE PLANNING SYSTEMS FOR HUMAN RESOURCES, PAYROLL, SUPPLY CHAIN, ACCOUNTS PAYABLE, AND GENERAL FINANCE FUNCTIONS

- WHEREAS, the Kenai Peninsula Borough ("Borough") has entered into an Operating Agreement with Central Peninsula General Hospital, Inc. ("CPGH, Inc.") for operation of Central Peninsula Hospital ("CPH") and other medical facilities, and to provide other healthcare programs and services, on a nonprofit basis in order to ensure the continued availability to the service area residents; and
- WHEREAS, Section 16, Finances, Paragraph (a) Operating Revenue, of the Operating Agreement requires that, on a quarterly basis, CPGH, Inc. "shall transfer all cash on hand in excess of the operating reserve amount to the Borough for deposit into the Central Peninsula Hospital Plant Replacement and Expansion Fund (PREF)"; and
- WHEREAS, Section 16, Finances, Paragraph (b) Plant Replacement and Expansion Fund, of the Operating Agreement provides, "The PREF is a fund designated as a source of funding for major repairs and replacement of Medical Facilities; improvements, fixtures, and equipment for Medical Facilities; acquisition of property, improvements, fixtures and equipment related to operation of the Medical Facilities; and to replenish the operating reserves, as provided in paragraph 16."; and
- WHEREAS, CPH implemented an integrated system in 2016, utilizing EPIC for its Electronic Health Records and Lawson for financial components of the system; and
- WHEREAS, the Lawson Payroll/HR portion of the implementation was not completed and CPH has continued using the MEDITECH "Magic" system for these functions; and
- **WHEREAS,** the MEDITECH system currently in use was implemented in 2001 and is well beyond end of expected life, leaving CPH as the only organization still on this software platform, creating an urgent need for replacement; and

- **WHEREAS,** Providence/Think-Engage has informed CPH that they expect to cease support of the Lawson version currently in use by CPH in the coming years; and
- WHEREAS, CPGH, Inc has informed the Borough that CPH has a need for the use of automated systems to process financial information for the organization, including processing of payroll for 1,000+ employees and gross pay in excess of \$90 million per year; and
- WHEREAS, per information provided by CPH administration, CPH staff reviewed new system offerings from Lawson/Infor and Workday, Inc. (Workday), and has conducted a structured evaluation and selection process to determine which of the systems reviewed would provide a solution which best meets the combined needs of CPH and its affiliates, with Workday selected as the system of choice over the Infor Cloudsuite product; and
- WHEREAS, per information provided by CPH administration, CPH wishes to implement Workday systems using a phased approach, with HR/Payroll implemented in Phase I, followed by other core financial systems implemented together in Phase 11; and
- **WHEREAS,** per information provided by CPH administration, CPH has identified capital costs associated with implementation of both phases of the Workday system and estimated them to be \$4,881,993 (Workday ERP Project); and
- **WHEREAS,** per information provided by CPH administration, CPH has identified annual software subscription costs for the Workday system to be \$1,297,869 over a three-year period; and
- WHEREAS, CPGH, Inc. has analyzed the cost of acquiring and implementing systems from Workday, Inc., including software subscription services for the first three years, and determined expected total costs to be an amount not to exceed \$6,179,862; and
- **WHEREAS,** The Central Peninsula Hospital PREF currently has an unobligated balance of \$64,316,917.69; and
- WHEREAS, Paragraph 1, Exhibit C, Memorandum of Agreement, requires CPGH, Inc. to notify the Borough finance director or designee of the date, method, and other necessary information to effectuate any deposit into or withdrawal from the PREF; however, the date of transfer and deposit cannot occur until after the date of assembly approval; and
- **WHEREAS,** the CPGH, Inc. board, at its February 24, 2022, meeting requested approval from the Borough Assembly to approve the capital funding and approve the transfer of funds from the PREF in an amount not to exceed \$4,881,993; and

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

- **SECTION 1.** Funds in the amount up to \$4,881,993 are appropriated from the Central Peninsula Hospital Unobligated portion of the Plant Replacement and Expansion Fund account number 490.20602 to be transferred to CPGH, Inc. for the purpose of the capital purchase for the Workday ERP Project.
- **SECTION 2.** This ordinance shall be effective immediately upon enactment.

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

ATTEST:

Brent Johnson, Assembly President

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

### Kenai Peninsula Borough Finance Department

### MEMORANDUM

- TO: Brent Johnson, Assembly President Members, Kenai Peninsula Borough Assembly
- THRU: Charlie Pierce, Borough Mayor
- FROM: Brandi Harbaugh, Finance Director BH
- **DATE:** May 24, 2022
- **RE:** Ordinance 2021-19- <u>40</u>, Appropriating Funding from the Central Peninsula Hospital Plant Replacement and Expansion Fund for the Replacement of Central Peninsula Hospital's Enterprise Resource Planning Systems for Human Resources, Payroll, Supply Chain, Accounts Payable, and General Finance Functions (Mayor)

The Kenai Peninsula Borough ("Borough") has entered into an Operating Agreement with Central Peninsula General Hospital, Inc. ("CPGH, Inc.") for operation of Central Peninsula Hospital ("CPH") and other medical facilities, and to provide other healthcare programs and services, on a nonprofit basis in order to ensure the continued availability to the service area residents. Section 16, Finances, Paragraph (b) Plant Replacement and Expansion Fund, of the Operating Agreement provides, "The PREF is a fund designated as a source of funding for major repairs and replacement of Medical Facilities; improvements, fixtures, and equipment for Medical Facilities; acquisition of property, improvements, fixtures and equipment related to operation of the Medical Facilities; and to replenish the operating reserves, as provided in paragraph 16."

CPGH, Inc. informed the Borough that CPH has a need for the use of automated systems to process financial information for the organization, including processing of payroll for 1,000+ employees and gross pay in excess of \$90 million per year. Per information provided by CPH administration, CPH wishes to implement Workday systems using a phased approach, with HR/Payroll implemented in Phase I, followed by other core financial systems implemented together in Phase 11. Per information provided by CPH CPH identified capital costs associated administration, has with implementation of both phases of the Workday system and estimated them to be \$4,881,993 (Workday ERP Project).

The CPGH, Inc. board, at its February 24, 2022, meeting requested approval from the Borough Assembly to approve the capital funding and approve the transfer of funds from the PREF in an amount not to exceed \$4,881,993;

March 24, 2022 Page 2 Re: Ordinance 2021-19-\_\_\_\_

Your consideration of this ordinance is appreciated.

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FINANCE DEPARTMENT ACCOUNT / FUNDS VERIFIED						
Acct. No	490.20602					
Amount	\$4,881,993					
By:	Date:	3/18/2022				

heritage place serenity house

#### **RESOLUTION 2022-04**

central peninsula general hospital, inc. d/b/a

hospital

Hospital Place, Soldotna, AK 99669

#### A RESOLUTION APPROVING FUNDS FOR THE REPLACEMENT OF CENTRAL PENINSULA HOSPITAL'S ENTERPRISE RESOURCE PLANNING SYSTEMS FOR HUMAN RESOURCES, PAYROLL, SUPPLY CHAIN, ACCOUNTS PAYABLE, AND GENERAL FINANCE FUNCTIONS

**1. WHEREAS,** the Kenai Peninsula Borough has entered into an Operating Agreement with Central Peninsula General Hospital, Inc. (CPGH, Inc.) for the operation of Central Peninsula Hospital and other Medical Facilities, and to provide other healthcare programs and services on a nonprofit basis in order to ensure continued availability to the Service Area residents; and

**2.** WHEREAS, CPH implemented an integrated system in 2016, utilizing EPIC for its Electronic Health Records and Lawson for financial components of the system; and

**3. WHEREAS,** the Lawson Payroll/HR portion of the implementation was not completed and CPH has continued using the MEDITECH "Magic" system for these functions; and

**4. WHEREAS,** the MEDITECH system currently in use was implemented in 2001 and is well beyond end of expected life, leaving CPH as the only organization still on this software platform, creating an urgent need for replacement; and

**5.** WHEREAS, Providence/Think-Engage has informed CPH that they expect to cease support of the Lawson version currently in use by CPH in the coming years; and

**6.** WHEREAS, CPH has a need for the use of automated systems to process financial information for the organization, including processing of payroll for 1,000+ employees and gross pay in excess of \$90 million per year; and

**7.** WHEREAS, CPH staff reviewed new system offerings from Lawson/Infor and Workday, Inc., and has conducted a structured evaluation and selection process to determine which of the systems reviewed would provide a solution which best meets the combined needs of CPH and its affiliates, with Workday selected as the system of choice over the Infor Cloudsuite product; and

**8.** WHEREAS, CPH wishes to implement Workday systems using a phased approach, with HR/Payroll implemented in Phase I, followed by other core financial systems implemented together in Phase II; and

**9.** WHEREAS, CPH has identified capital costs associated with implementation of both phases of the Workday system and estimated them to be \$4,881,993; and

**10.** WHEREAS, CPH has identified annual software subscription costs for the Workday system to be \$1,297,869 over a three-year period; and

**11. WHEREAS,** CPGH, Inc. has analyzed the cost of acquiring and implementing systems from Workday, Inc., including software subscription services for the first three years, and determined expected total costs to be an amount not to exceed \$6,179,862 ; and

**12.** WHEREAS, CPH Administration has determined that there are sufficient funds available in the Central Peninsula Hospital Plant Replacement and Expansion Fund (PREF) to fund the \$4,881,993 capital cost of the Workday ERP Project and would like to utilize PREF funds for the cost of the project; and

**12.** WHEREAS, under Section 16(b) of the Operating Agreement, neither the Borough or CPGH, Inc. shall obligate or attempt to spend or transfer funds from the PREF without approval and appropriation by the Borough Assembly; and,

**13.** WHEREAS, under Section 16(b) of the Operating Agreement, any transfer in or out of the PREF shall first be considered by the CPGH, Inc. Board and its recommendation shall be forwarded to the Assembly.

# NOW, THEREFORE, BE IT RESOLVED, BY THE BOARD OF DIRECTORS OF CENTRAL PENINSULA GENERAL HOSPITAL, INC., A NOT-FOR-PROFIT ALASKA CORPORATION, THAT:

- **SECTION 1.** The Board of Directors of Central Peninsula General Hospital d/b/a Central Peninsula Hospital ("CPH") approves funding for annual subscription costs required for the Workday ERP System, in an amount not to exceed \$1,297,869 over a three-year term.
- **SECTION 2.** The Board of Directors of Central Peninsula General Hospital d/b/a Central Peninsula Hospital ("CPH") approves the capital funds required for the Workday ERP Project, and authorizes the additional transfer of funds from the Plant Replacement and Expansion Fund (PREF) in the amount not to exceed \$4,881,993.
- **SECTION 3.** The Board of Directors requests the Kenai Peninsula Borough Assembly approve the capital funding in the amount not to exceed \$4,881,993 and appropriate PREF funds for the project.
- **SECTION 4.** This resolution becomes effective immediately upon adoption by the CPGH, Inc. Board of Directors.

I certify that the above resolution was approved by vote of the Board of Directors of Central Peninsula General Hospital, Inc. at the <u>02/24/22</u> Board meeting.

Dated: 02/24/22

Carrie Couey, Secretary/Treasurer CPGH, Inc. Board of Directors

Introduced by:	Mayor
Date:	04/05/22
Hearing:	04/19/22
Action:	
Vote:	

#### KENAI PENINSULA BOROUGH ORDINANCE 2021-19-41

#### AN ORDINANCE APPROPRIATING FUNDS FROM THE SOUTH PENINSULA HOSPITAL SERVICE AREA FUND BALANCE FOR PURCHASE OF REPLACEMENT PULMONARY FUNCTION DIAGNOSTIC EQUIPMENT

- WHEREAS, the Kenai Peninsula Borough ("Borough") owns and provides for the operation of South Peninsula Hospital ("SPH") through the South Kenai Peninsula Hospital Service Area, ("Service Area"); and
- WHEREAS, the Borough has entered into an operating agreement with South Peninsula Hospital, Inc. ("SPHI") for the lease and operation of the Hospital and other medical facilities, to operate these medical facilities on a nonprofit basis in order to ensure the continued availability of the medical services to the service area residents and visitors; and
- WHEREAS, the Hospital Board of Directors approved the FY2023 Capital Projects list in January 2022 and the Service Area Board voted at their February 2022 meeting to recommend that list to the Borough Assembly, and
- WHEREAS, included on that list of approved capital purchases is the replacement of the Hospital's Pulmonary Function Diagnostic ("PFT") equipment in the amount of \$86,929.52, and
- **WHEREAS,** it has come to the attention of SPHI's administration that the existing PFT equipment will no longer be usable after May 2022 and the replacement unit has a lead time of 90 days to purchase, and
- WHEREAS, SPHI has requested that a supplemental appropriation be made from the South Peninsula Hospital Service Area Fund, fund balance in April 2022 to provide for immediate purchase of the PFT equipment; and
- **WHEREAS,** SPHI's administration has agreed that it will cancel the project for FY2023 allowing the FY2023 proposed transfer from the South Peninsula Hospital Service Area to the South Peninsula Hospital Capital Project Fund to be reduced by \$86,930; and
- WHEREAS, the Service Area currently has \$1.9 million in the Service Area fund balance; and

- WHEREAS, at its regular meeting of March 23, 2022, the SPH, Inc. Board recommended approval by the passage of SPH Resolution 2022-04; and
- WHEREAS, at its meeting on March 10, 2022, the South Kenai Peninsula Hospital Service Area Board recommended approval by the passage of SKPHSAB Resolution 2022-05;

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

- **SECTION 1.** That funds in the amount of \$86,930 are appropriated from the South Peninsula Hospital Service Area Fund fund balance account number 602.27910 to be transferred to the South Peninsula Hospital Service Area Capital Project Fund account 491.81210.22PFT.49999 for purchase of the Pulmonary Function Diagnostic equipment.
- **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 takes effect immediately upon enactment.

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

ATTEST:

Brent Johnson, Assembly President

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

## Kenai Peninsula Borough Finance Department

#### MEMORANDUM

TO:	Brent Johnson, Assembly President Members, Kenai Peninsula Borough Assembly
THRU:	Charlie Pierce, Mayor (
FROM:	Brandi Harbaugh, Finance DirectorBH John Hedges, Purchasing & Contracting Director JH
DATE:	March 24, 2022
RE:	Ordinance 2021-19_41, Appropriating Funds from the South Peninsula Hospital Service Area Fund Balance for Purchase of Replacement Pulmonary Function Diagnostic Equipment (Mayor)

The Kenai Peninsula Borough (Borough) owns and provides for the operation of South Peninsula Hospital (SPH) through the South Kenai Peninsula Hospital Service Area.

South Peninsula Hospital Inc. (SPHI) operates the hospital and other medical facilities by way of an Operating Agreement with the Borough.

In March 2022, the borough received notice from SPHI that its Pulmonary Function Diagnostic (PFT) equipment will no longer be usable after May 2022 and the replacement unit has a lead-time of 90 days to purchase. Purchase of the PFT equipment was approved by the Hospital Service Area Board as part of the funded FY2023 Capital Projects list. However, due to the lead-time, SPHI is requesting that the PFT equipment be purchased now rather than in FY2023.

This ordinance appropriates funds of \$86,930 to be transferred from the South Peninsula Hospital Service Area Fund fund balance to the South Peninsula Hospital Service Area Capital Project Fund for purchase of the equipment.

Your consideration of this ordinance is appreciated.

FINANCE DEPARTMENT FUNDS/ACCOUNT VERIFIED				
Account:	602.27910			
Amount:	\$ 86,930.00			
ву:С	Date: 3/18/2022			

Introduced by: Date: Action: Vote: Administration March 23, 2022 Approved Yes - 11, No - 0, Exc.- 0

#### SOUTH PENINSULA HOSPITAL BOARD RESOLUTION 2022-04

#### A RESOLUTION OF THE SOUTH PENINSULA HOSPITAL BOARD OF DIRECTORS APPROVING THE REQUEST OF UNOBLIGATED SERVICE AREA FUNDS TO REPLACE ITS PULMONARY FUNCTION DIAGNOSTIC EQUIPMENT IN FY22

WHEREAS, the South Peninsula Hospital Board of Directors approved the FY23 Capital Projects list in January 2022 and the South Kenai Peninsula Hospital Service Area Board voted at their February 2022 meeting to recommend that list to the Kenai Peninsula Borough Assembly, and

WHEREAS, included on that list of approved capital purchases is a replacement of the Hospital's Pulmonary Function Diagnostic (PFT) Equipment in the amount of \$86,929.52, and

WHEREAS, it has come to the attention of Hospital management that the existing PFT equipment will no longer be usable after May 2022 and the replacement unit has a lead time of 90 days to purchase, and

WHEREAS, the Hospital has attempted to rent or 111 e a temporary unit and the lease terms of that PFT equipment constitute a capital purchase, and 11

WHEREAS, the Hospital requests that a supplemental appropriation be made from the South Peninsula Hospital Service Area Fund fund balance in April 2022 to provide for immediate purchase of the PFT Equipment; and

WHEREAS, the Hospital agrees that it will cancel the project for FY2023 allowing the FY2023 proposed transfer from the South Peninsula Hospital Service Area to the South Peninsula Hospital Capital Project Fund to be reduced by \$86,930; and

WHEREAS, the PFT Equipment replacement was discussed at Finance Committee on March 17, 2022; and

WHEREAS, this resolution was approved by the South Peninsula Hospital Board of Directors at its March 23, 2022 meeting.

## NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF SOUTH PENINSULA HOSPITAL:

- 1. That the South Peninsula Hospital Board of Directors approves the purchase of replacement Pulmonary Function Diagnostic Equipment in the amount of \$86,930.
- That the South Kenai Peninsula Service Area Board make a recommendation to approve the use of Service Area Fund Balance in the amount of \$86,930 for the Pulmonary Function Diagnostic Equipment.

3. That the South Peninsula Hospital Board of Directors request that the Kenai Peninsula Borough appropriate \$86,930 in Service Area Funds for the Pulmonary Function Diagnostic Equipment.

# PASSED AND ADOPTED BY THE BOARD OF DIRECTORS OF SOUTH PENINSULA AT ITS MEETING HELD ON THIS 23rd DAY OF MARCH, 2022.

ATTEST:

Julie Woodworth, Board Secretary

Kf Ca.

Kelly Cooper, Board President

#### SOUTH KENAI PENINSULA HOSPITAL SERVICE AREA BOARD RESOLUTION 2022-05

### A Resolution of the South Kenai Peninsula Hospital Service Area Board Recommending Approval of the Request by the South Peninsula Hospital, Inc. Board of Directors for Un-obligated South Kenai Peninsula Hospital Service Area Funds to Replace South Peninsula Hospital, Inc.'s Pulmonary Function Diagnostic Equipment in FY22

WHEREAS, in accordance with the Operating Agreement with the Kenai Peninsula Borough (Borough) section 13 and 13 b i, <u>Capital Improvement Projects Approval and Management</u>, the Borough may finance capital improvements for the medical facilities as necessary for the provision of services and functions to meet the needs of the residents of the South Kenai Peninsula Hospital Service Area. Projects requiring Borough Assembly approval may be approved during the annual Borough budgeting process or on an individual basis; and

**WHEREAS**, the South Peninsula Hospital (SPHI) Board of Directors approved the FY23 Capital Projects list in January 2022 and the South Kenai Peninsula Hospital (SKPH) Service Area Board voted at their February 2022 meeting to recommend that list to the Kenai Peninsula Borough Assembly; and

**WHEREAS**, included on that list of approved capital purchases is the replacement of the SPHI's Pulmonary Function Diagnostic Equipment in the amount of \$86,930; and

**WHEREAS**, it has come to the attention of SPHI management that the existing Pulmonary Function Diagnostic Equipment will no longer be usable after May 2022 and the replacement unit has a lead time of 90 days to purchase; and

**WHEREAS**, the SPHI has attempted to rent or lease a temporary unit and the lease terms of that Pulmonary Function Diagnostic Equipment constitute a capital purchase; and

**WHEREAS**, the SPHI requests that a supplemental appropriation be made from the SKPH Service Area Fund balance in April 2022 to provide for immediate purchase of the Pulmonary Function Diagnostic Equipment; and

**WHEREAS**, the SPHI agrees that it will cancel the project for FY2023, allowing the FY2023 proposed transfer from the SKPH Service Area Fund to the SKPH Capital Project Fund to be reduced by \$86,930; and

**WHEREAS**, the Pulmonary Function Diagnostic Equipment replacement will be reviewed and expected to be approved by the SPHI Finance Committee on March 17, 2022; and

**WHEREAS**, this resolution will be reviewed and expected to be approved by the South Peninsula Hospital, Inc. Board of Directors at its March 23, 2022 meeting.

#### NOW THEREFORE BE IT RESOLVED THAT:

The South Kenai Peninsula Hospital Service Area Board—assuming the above noted SPHI Finance Committee and Board of Directors approvals take place as anticipated— hereby respectfully recommends the approval of the South Peninsula Hospital, Inc. Board of Directors' request of \$86,930 in South Kenai Peninsula Hospital Service Area un-obligated funds to replace South Peninsula Hospital, Inc.'s Pulmonary Function Diagnostic Equipment.

Adopted by the South Kenai Peninsula Hospital Service Area Board, March 10, 2022.

Helen Armstrong, Chair O South Kenai Peninsula Hospital Service Area Board

Introduced by:	Mayor
Date:	04/05/22
Hearing:	04/19/22
Action:	
Vote:	

#### KENAI PENINSULA BOROUGH ORDINANCE 2021-19-42

#### AN ORDINANCE APPROPRIATING FUNDING FROM THE SOUTH PENINSULA HOSPITAL PLANT REPLACEMENT AND EXPANSION FUND TO REPLENISH SOUTH PENINSULA HOSPITAL'S OPERATING CASH

- WHEREAS, the Kenai Peninsula Borough ("Borough") has entered into an Operating Agreement with South Peninsula Hospital, Inc. ("SPHI") for operation of the South Peninsula Hospital and other medical facilities, and to provide other healthcare programs and services, on a nonprofit basis in order to ensure the continued availability to the service area residents; and
- WHEREAS, Section 16, Finances, Paragraph (a) Operating Revenue, requires that, on a quarterly basis, SPHI "shall transfer all cash on hand in excess of the operating reserve amount to the Borough for deposit into the South Peninsula Hospital Plant Replacement and Expansion Fund (PREF)"; and
- WHEREAS, Section 16, Finances, Paragraph (a) Operating Revenue, also allows that, "If the cash on hand is less than ninety (90) days at any time, then SPHI may request that the Borough authorize the transfer of an amount from the PREF to its operating reserve to maintain the operating reserve amount, by SPHI Board action"; and
- WHEREAS, SPHI has determined that the operating reserve as of February 28, 2022 is less than 90 days with 70 day "cash on hand," and in order to reach 90 days, SPHI may request up to \$5,161,198 (20 days); and
- **WHEREAS,** the South Peninsula Hospital PREF currently has an unobligated balance of \$10,441,195.95; and
- WHEREAS, Section 16, Finances, Paragraph (b), Plant Replacement and Expansion Fund, requires that any transfer in or out of the PREF shall first be considered by the SPHI board and its recommendation shall be forwarded to the assembly; and
- WHEREAS, Paragraph 1, Exhibit C, Memorandum of Agreement, requires SPHI. to notify the Borough finance director or designee of the date, method, and other necessary information to effectuate any deposit into or withdrawal from the PREF; however, the date of transfer and deposit cannot occur until after the date of assembly approval; and

- WHEREAS, the South Kenai Peninsula Hospital Service Area Board, at its March 10, 2022 meeting, recommended the transfer of funds in the amount of \$5,161,198 from the PREF to SPHI to bring its "cash on hand" to 90 days, this recommendation was condition on the anticipated request approval from the SPHI Finance Committee and SPHI Board; and
- **WHEREAS,** the SPHI Board, at its March 23, 2022 meeting, recommended approval by the passage of SPH Resolution 2022-06;

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

- SECTION 1. Funds in the amount up to \$5,161,198 are appropriated from the South Peninsula Hospital Unobligated portion of the Plant Replacement and Expansion Fund from account number 491.20602 to be transferred to South Peninsula Hospital, Inc. (SPHI) for the purpose of replenishment of SPHI's operating cash to 90 days "cash on hand".
- **SECTION 2.** SPHI is to provide a follow-up report to the assembly shortly after June 30, 2022, providing an update on the cash reserve status for SPHI.
- **SECTION 3**. This ordinance shall be effective immediately upon enactment.

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

ATTEST:

Brent Johnson, Assembly President

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

### Kenai Peninsula Borough Finance Department

### MEMORANDUM

TO:	Brent Johnson, Assembly President Members, Kenai Peninsula Borough Assembly
THRU:	Charlie Pierce, Borough Mayor
FROM:	Brandi Harbaugh, Finance Director BH
DATE:	May 24, 2022
RE:	Ordinance 2021-19- <u>42</u> , Appropriating Funding from the South Peninsula Hospital Plant Replacement and Expansion Fund to Replenish South Peninsula Hospital's Operating Cash (Mayor)

On March 15, 2022, South Peninsula Hospital, Inc. ("SPHI") provided a formal request to transfer \$5,161,198 from the South Peninsula Hospital Plant Replacement and Expansion Fund "PREF" to SPHI's operating reserve to bring the current balance within the allowable 90-day cash on hand.

The Kenai Peninsula Borough ("Borough") has entered into an Operating Agreement with SPHI for operation of the South Peninsula Hospital and other medical facilities, and to provide other healthcare programs and services, on a nonprofit basis in order to ensure the continued availability to the service area residents.

Pursuant to the operating agreement, if "cash on hand" is less than 90 days at any time, then SPHI may request that the Borough authorize the transfer of an amount from the PREF to its operating reserve to maintain the operating reserve amount. The operating agreement requires that any transfer in or out of the PREF first be considered by the SPHI board and its recommendation shall be forwarded to the assembly. SPHI has determined that the operating reserve as of February 28, 2022 is less than 90 days with 70 days "cash on hand," In order to reach 90 days, SPHI may request up to \$5,161,198 (20 days).

The South Kenai Peninsula Hospital Service Area Board recommended approval of this ordinance. This matter will come before the SPHI board for its recommendation on March 23, 2022. <u>SPHI Board's recommendations will be</u>

provided to the assembly prior to public hearing on this ordinance.

Your consideration of this ordinance is appreciated.

A	FINANCE DEPARTMENT CCOUNT / FUNDS VERIFIED
Acct. No.	491.20602
Amount	\$5,161,198
By:	Date: 3/18/2022

Introduced by: Date: Action: Vote: Administration March 23, 2022 Approved Yes –10, No – 0, Excused – 1

#### SOUTH PENINSULA HOSPITAL BOARD RESOLUTION 2022-06

#### A RESOLUTION APPROVING THE REQUEST OF CASH FROM THE PLANT/EQUIPMENT REPLACEMENT AND EXPANSION FUND TO SUPPLEMENT OPERATING CASH ON HAND AS OF FEBRUARY 28, 2022

WHEREAS, the Kenai Peninsula Borough has entered into an Operating Agreement with South Peninsula Hospital Inc. ("SPH, Inc.") for the management and operation of South Peninsula Hospital and other Medical Facilities, and to provide other healthcare programs and services, on a nonprofit basis to ensure continued availability to the Service Area residents; and

WHEREAS, Section 16, <u>Finances</u>, Paragraph (a) <u>Operating Revenue</u>, SPHI shall maintain an operating reserve of not more than ninety (90) days "cash on hand", and "If the cash on hand is less than ninety (90) days at any time, then SPHI may request that the Borough authorize the transfer of an amount from PREF to its operating reserve to maintain the operating reserve amount, by SPHI Board action", and

WHEREAS, SPH has determined that the operating reserve as of February 28, 2022 is less than 90 days with (70) days "cash on hand". In order to reach 90 days, South Peninsula Hospital may request up to \$5,161,198 (20 days) in order to supplement operating reserves in accordance with the Operating Agreement; and

WHEREAS, SPH Board of Directors requests that PREF funds in the amount of \$5,161,198 be paid from KPB Borough Investment funds as an appropriation to South Peninsula Hospital operating reserve via check or ACH transfer; and

WHEREAS, this resolution was reviewed and approved at the Board Finance Committee meeting held on March 17, 2022.

## NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF SOUTH PENINSULA HOSPITAL:

- 1. That SPHI Board of Directors requests a transfer of **\$5,161,198 (20 days)** from the South Peninsula Hospital Plant/Equipment Replacement and Expansion Fund (PREF), in order to restore SPHI operating reserve to 90 days cash on hand, in accordance with Section 16, Finances, Paragraph (b) Plant/Equipment Replacement and Expansion Fund.
- 2. That SKPHSAB is hereby requested to support this operating transfer to South Peninsula Hospital Inc.

### PASSED AND ADOPTED BY THE BOARD OF DIRECTORS OF SOUTH PENINSULA AT ITS MEETING HELD ON THIS 23rd DAY OF MARCH, 2022.

ATTEST:

Kelly Cooper, Board President

Julie Woodworth, Secretary

#### SOUTH KENAI PENINSULA HOSPITAL SERVICE AREA BOARD RESOLUTION 2022-04

#### A Resolution of the South Kenai Peninsula Hospital Service Area Board Recommending Approval of the South Peninsula Hospital, Inc. Board of Directors' Request of the Transfer of Cash from the Plant/Equipment Replacement and Expansion Fund to South Peninsula Hospital Operating Cash

**WHEREAS**, the Kenai Peninsula Borough (Borough) has entered into an Operating Agreement with South Peninsula Hospital, Inc. (SPHI) for the management and operation of SPHI and other medical facilities, and to provide other healthcare programs and services, on a nonprofit basis to ensure continued availability to the South Kenai Peninsula Hospital Service Area residents; and

WHEREAS, Section 16, Finances, Paragraph (a) Operating Revenue section of that agreement states that SPHI shall maintain an operating reserve of not more than ninety (90) days "cash on hand," and "If the cash on hand is less than ninety (90) days at any time, then SPHI may request that the Borough authorize the transfer of an amount from Plant/Equipment Replacement and Expansion Fund (PREF) to its operating reserve to maintain the operating reserve amount, by SPHI Board action," and

WHEREAS, SPHI has determined that the operating reserve as of February 28, 2022 is less than 90 days with (70) days "cash on hand." In order to reach 90 days, SPHI may request up to \$5,161,198 (20 days) in order to supplement operating reserves in accordance with the Operating Agreement; and

**WHEREAS**, SPHI Board of Directors requests that PREF funds in the amount of \$5,161,198 be paid from Borough Investment Funds as an appropriation to SPHI operating reserve via check or ACH transfer; and

**WHEREAS**, this resolution will be reviewed and expected to be approved at the SPHI Board of Directors Finance Committee meeting to be held on March 17, 2022.

**WHEREAS**, this resolution will be reviewed and expected to be approved by the SPHI Board of Directors on March 23, 2022.

#### NOW THEREFORE BE IT RESOLVED THAT:

The South Kenai Peninsula Hospital Service Area Board—assuming the above noted SPHI Finance Committee and Board of Directors approvals take place as anticipated—hereby respectfully recommends the approval of the South Peninsula Hospital, Inc. Board of Directors' request to transfer \$5,161,198 from the Plant/Equipment Replacement and Expansion Fund to South Peninsula Hospital, Inc. Operating Cash to restore operating cash to 90 days.

Adopted by the South Kenai Peninsula Hospital Service Area Board, March 10, 2022.

Helen Armstrong, Chair South Kenai Peninsula Hospital Service Area Board

Introduced by:	Mayor, Ecklund
Date:	04/05/22
Hearing:	04/19/22
Action:	
Vote:	

#### KENAI PENINSULA BOROUGH ORDINANCE 2021-19-43

#### AN ORDINANCE REDIRECTING EXCESS FUNDS APPROPRIATED FOR THE US ARMY CORPS OF ENGINEERS JAPANESE CREEK FEASIBILITY STUDY TO COMPLETE FLOOD HAZARD AND ALTERNATIVES ANALYSES, AND DESIGN PLANS FOR FLOOD RISK MITIGATION PROJECTS

- WHEREAS, Ordinance 2019-19-27 appropriated matching funds for the US Army Corps of Engineers (USACE) to complete a feasibility study of flood risk management alternatives on the Japanese Creek alluvial fan (the "study"); and
- WHEREAS, the study required a \$450,000 local match with the Kenai Peninsula Borough (Borough) Seward-Bear Creek Flood Service Area committing \$180,000, the Borough's Solid Waste Department committing \$135,000, and the City of Seward committing \$135,000
- **WHEREAS,** the USACE completed the feasibility study and provided the local sponsors with a detailed technical report of recommended measures and mitigation alternatives, including hydraulic and hydrologic analyses, national and local cost estimates, natural and cultural resources, and the identification, development and evaluation of alternatives; and
- WHEREAS, there is an additional \$241,849.02 in project funds remaining; and
- **WHEREAS,** the primary flooding threat in the Japanese Creek corridor is a rapid deposition of sediment that would cause the existing levee and Dieckgraeff Road to overtop and fail;
- WHEREAS, the Borough is responsible for maintaining Dieckgraeff Road; and
- WHEREAS, in the lower reaches of the Japanese Creek levee, the USACE provided alternatives for erosion and flood control to mitigate damages to Dieckgraeff Road and overtopping of the lower reaches of the levee into the Forest Acres neighborhood, alternatives include road modifications, a sediment trap, and downstream channelization; and
- **WHEREAS,** Dieckgraeff Road is the only ingress/egress to the Seward Solid Waste Transfer facility located in this area; and

- **WHEREAS,** therefore, it is in the best interests of the Borough to contribute to the match to complete design and engineering for the recommended alternatives; and
- **WHEREAS,** at its meeting held on March 29, the City of Seward Council recommended approval by the passage of Seward Resolution 2022-040; and
- **WHEREAS,** at its meeting held on April 4, 2022, the Seward-Bear Creek Flood Service Area Board recommended approval by unanimous consent;

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

- **SECTION 1.** That \$90,695.28 of Seward-Beard Creek Flood Service Area funds are deobligated from the Seward-Bear Creek Flood Service Area account 259.21212.20SFS.49999. The funds shall be re-directed to account 259.21212.22FHZ.49999 to continue mitigation in the lower reaches including flood hazard analyses and updated mapping, lower reach alternative analyses, and construction ready design plans for Dieckgraeff Road and drainage improvements in the low-lying areas of the alluvial fan.
- **SECTION 2.** That \$75,576.87 of City of Seward match funds are de-obligated from account 271.94910.20SFS.49999. The funds shall re-directed to account 271.94910.22FHZ.49999 for the purpose described in Section 1 of this ordinance.
- **SECTION 3.** That \$75,576.87 of Borough Solid Waste Department funds are de-obligated from account 290.32150.20SFS.49999. The funds shall be re-directed to account 290.32150.22FHZ.49999 for the purpose described in Section 1 of this ordinance.
- **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 be effective immediately upon enactment.

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

Brent Johnson, Assembly President

Johni Blankenship, MMC, Borough Clerk

ATTEST:

Yes:

No:

Absent:

Kenai Peninsula Borough Seward-Bear Creek Flood Service Area Solid Waste Department

### MEMORANDUM

TO:	Brent Johnson, Assembly President Members, Kenai Peninsula Borough Assembly
THRU:	Charlie Pierce, Kenai Peninsula Borough Mayor (K Cindy Ecklund, Assembly Member (MA) for CE Brenda Ahlberg, Emergency Manager Bl John Hedges, Purchasing & Contracting Director LF Brandi Harbaugh, Finance Director BH
FROM:	Stephanie Presley, SBCFSA Program Lead SP Lee Frey, Solid Waste Director <sup>LF</sup>
DATE:	March 24, 2022
RE:	Ordinance 2021-19-43, Redirecting Excess Funds Appropriated for the U.S. Army Corps of Engineers Japanese Creek Feasibility Study to Complete Flood Hazard and Alternatives Analyses, and Design Plans for Flood Risk Mitigation Projects (Mayor, Ecklund)

Ordinance 2019-19-27 appropriated matching funds for the US Army Corps of Engineers (USACE) to complete a feasibility study of flood risk management alternatives on the Japanese Creek alluvial fan. The study required a \$450,000 local match with the Borough's Seward-Bear Creek Flood Service Area committing \$180,000, Borough's Solid Waste Department committing \$135,000, and the City of Seward committing \$135,000.

The USACE completed the feasibility study and provided the local sponsors with a detailed technical report of recommended measures and mitigation alternatives, including hydraulic and hydrologic analyses, national and local cost estimates, natural and cultural resources, and the identification, development and evaluation of alternatives. There is, in total, \$241,849.02 in project funds remaining (SBCFA \$90,695.28, City of Seward \$75,576.87, Borough Solid Waste Department \$75,576.87).

The greatest threat from flooding in the Japanese Creek corridor is a rapid deposition of sediment that would cause the existing levee and Dieckgraeff Road to overtop and fail. Japanese Creek has a history of overtopping the lower reaches of the levee and road with 8 such floods recorded in the last 20 years.

The USACE study included two iterations of analyses in the upper and lower reaches of the Japanese Creek watershed. In the upper reaches, while it was determined a large landslide or high sediment transport flood event could overtop or breach the existing levee, resulting in a release of flows along the

Page -2-March 24, 2022 RE: Ordinance 2021-19-43

alluvial fan, the modeled damages were not costly enough to justify rebuilding the levee. The elevation of this section of embankment appears to provide adequate protection during a base flood event.

In the lower reaches, the USACE provided alternatives for erosion and flood control to mitigate damages to Dieckgraeff Road and overtopping of the lower reaches of the levee into the Forest Acres neighborhood. Recommended alternatives include road modifications, a sediment trap, and downstream channelization.

The Kenai Peninsula Borough assumed site operations at the Seward Landfill in 1974. A Transfer Station was constructed in the early 1990s. As part of the process for siting the Seward Transfer facility and the need to cross state lands to access the facility, the Borough took on responsibility for Dimond Blvd., now named Dieckgraeff Road.

Dieckgraeff Road is the only ingress/egress to the Solid Waste facility located in this area; therefore, it is in the best interests of the Borough to contribute to the match to complete design and engineering for the recommended alternatives.

This ordinance would re-direct \$241,846.92 of the remaining match funds appropriated by Ordinance 2019-19-27; \$75,576.87 from the Solid Waste Operating Fund and \$90,695.28 from the Seward-Bear Creek Flood Service Area, to be combined with \$75,576.87 already appropriated from the City of Seward. The funds will be used to continue mitigation in the lower reaches including flood hazard analyses and updated mapping, lower reach alternative analyses, and construction ready design plans for Dieckgraeff Road and drainage improvements in the low-lying areas of the alluvial fan.

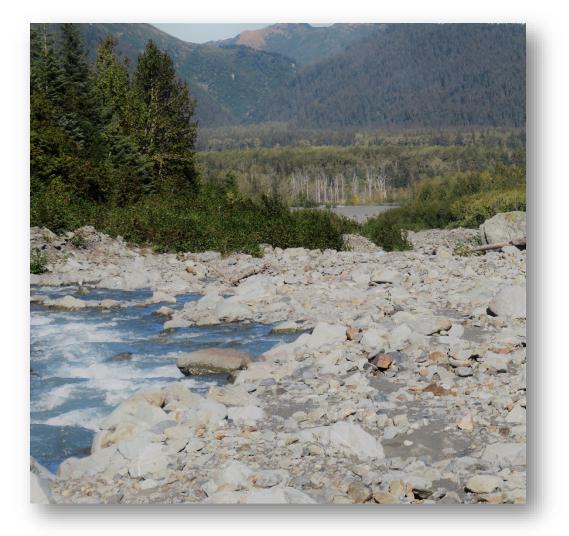
Your consideration of this ordinance is appreciated.

	FINANCE DEPARTMENT FUNDS VERIFIED	
	Acct. No.: <u>259.21212.20SFS.49999</u> Amount: \$ <u>90,695.28</u>	
	Acct. No.: <u>290.32150.20SFS.49999</u> Amount: \$ <u>75.576.87</u>	
	Acct. No.: <u>271.94910.20SFS.49999</u> Amount: <u>\$ 75.576.87</u>	
Ву: _	Date: 3/23/2022	_

US Army Corps of Engineers®

**Technical Report** 

# Japanese Creek Flood Risk Reduction Seward, Alaska



September 2021

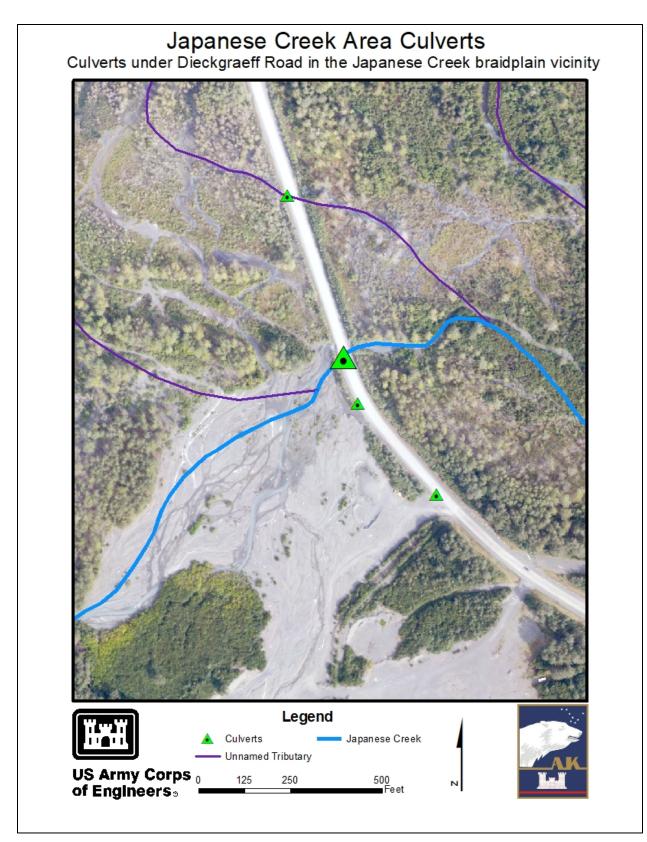


Figure 4. Dieckgraeff Road culverts

### Technical Report



Figure 5. Main 12' culvert under Dieckgraeff Road.

### 3.2.4. Road Modification

Anecdotal information states that the culverts under Dieckgraeff road are under the elevation of the floodplain upstream and downstream. However, it is not recommended to raise the elevation of Dieckgraeff road without a full hydrologic analysis due to the risk of increasing flood risk around the road.

It is possible that paving a spillway on the top of Dieckgraeff road could improve waste trucks accessing the dump after an overtopping event, but this was not investigated by the team.

Another alternative would be to install more culverts, such as two 4' or larger culverts so that one culvert could be closed for maintenance. It is possible that a box culvert shape could make it easier to perform maintenance.

Lastly, a bridge crossing was briefly considered. A bridge would allow access to the dump site as higher flow conditions than present and would not need to be regraded if overtopped. However, the costs of installing and maintaining a bridge are high and were not investigated.

flood event with 974,000 cy of sediment, water jumps the channel and spreads over the alluvial fan. The water depth is minimal, only one to two feet in some areas, which is likely too shallow to occur significant damages. Therefore, the sensitivity analysis revealed that the current sediment (as of the 2009 LiDAR survey) of Japanese Creek, coupled with a 0.2% flood does not incur enough damages to justify a project.

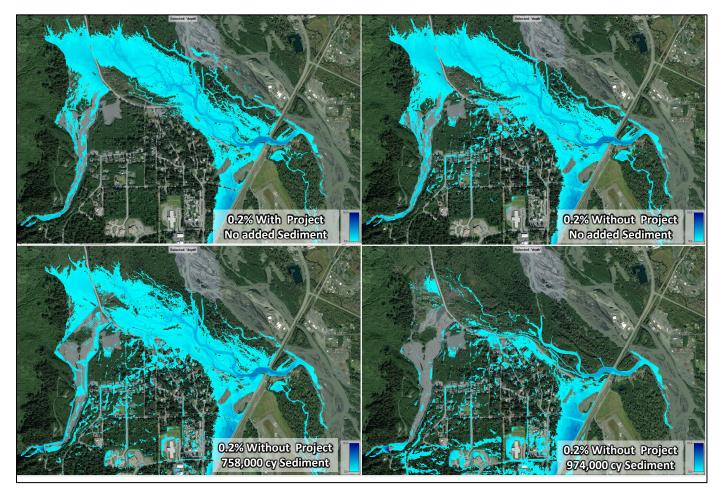


Figure 18. Modeling flood depth grid results with additional sedimentation.

### 6.1.3 Rehabilitating Embankment

Initial investigations focused on rehabilitating the existing embankment (Alternatives 2 and 3). During the site visit, the uppermost extent of the embankment at the mouth of the canyon was observed to be in good condition. Vegetation did not permit a close inspection of the stone, but the presence of vegetation indicates that the area has not experienced recent erosion. The elevation of this section of embankment appeared to provide adequate protection.

Moving downstream, the displacement of large armor stone was observed, as well as sections of exposed geotextile fabric (Figure 19).

sediment trap is performing regular maintenance and should be constructed in a location to provide easy access to a side dump.

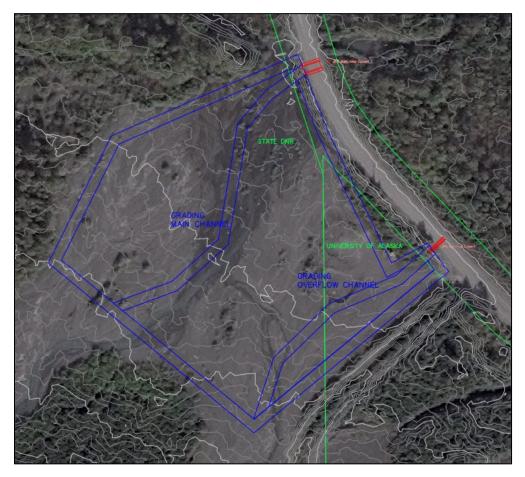


Figure 22. Basic sediment trap design.

Another possible mitigation measure would be to construct a groin or series of groins consisting of rock perpendicular to the direction of flow, extending out into the channel. The groin would push the flow of the main channel away from the edge of the embankment. Behind and downstream of the groin, sediment would be allowed to deposit, acting as a mini sedimentation basin. The sediment would need to be regularly removed for the groin to function properly.

### 6.2 Second Iteration

A total of three structural alternatives (summarized in Table 6) were identified as options to reduce the costs of sediment management and ease the impact of sediment deposition. Values listed in this document are based on fiscal year (FY) 2021 price levels unless otherwise noted. Annualized benefits and costs are computed using a 50-year period of analysis and the FY21 federal discount rate of 2.5 percent. One nonstructural alternative of moving the waste transfer station was briefly discussed but was ruled out due to costs. In addition, Alternative 2a was screened out after the initial cost analysis based on the high cost. Therefore, Alternative 1a and Alternative 3a were

warning system as identified in Alternative 1a.

### 6.2.2 Evaluation of Hydraulic Modeling Results- Second Iteration

Second iteration hydraulic analysis focused on the downstream channelization (dredging) alternative (2a). This alternative included excavating and lining a channel with rock as shown in Figure 23 along the alignment shown in Figure 24. The channel capacity would be approximately 1% percent chance exceedance, or a 100-year flood. The dredging channel location follows the existing channel as closely as possible and could improve conveyance of sediment to the Resurrection River.

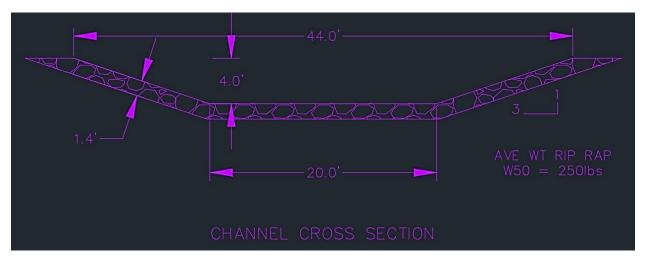


Figure 23. Downstream dredging channel cross section.



Figure 24. Downstream dredging channel location (orange).

### MEMORANDUM

- TO: Brent Johhnson, Assembly President Kenai Peninsula Borough Assembly Members
- THRU: Johni Blankenship, Borough Clerk (/////) for: JB
- **FROM:** Michele Turner, Deputy Borough Clerk (

**DATE:** April 7, 2022

**RE:** <u>Ordinance 2021-19-43</u>: Redirecting Excess Funds Appropriated for the U.S. Army Corps of Engineers Japanese Creek Feasibility Study to Complete Flood Hazard and Alternatives Analyses, and Design Plans for Flood Risk Mitigation Projects (Mayor, Ecklund)

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

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

- "WHEREAS, at its meeting held on <u>March 29</u>, 2022, the City of Seward Council recommended <u>approval by the passage of Seward Resolution 2022-</u>040; and
- WHEREAS, at its meeting held on April 4, 2022, the Seward-Bear Creek Flood Service Area Board recommended <u>approval by unanimous consent</u>;"

Thank you.

#### Turner, Michele

From:	Presley, Stephanie			
Sent:	Tuesday, April 5, 2022 10:27 AM			
То:	Blankenship, Johni; Turner, Michele			
Cc:	Harbaugh, Brandi; Ahlberg, Brenda; Frey, Lee; Brenda Ballou; Janette Bower; Stephen			
	Sowell; Kelley, Sean			
Subject:	Ordinance 2021-19-43 Recommendations			
Attachments:	Res2022-040 75k to Japp Creek Flood Mitigation.pdf			

Good morning.

At the April 4, 2022 regular meeting, the Seward- Bear Creek Flood Service Area board reviewed Ordinance 2021-19-43 and voted unanimously to recommended approval of this ordinance re-directing study funds to continue mitigation in the lower reaches of Japanese Creek, including flood hazard analyses and updated mapping, lower reach alternative analyses, and construction ready design plans for Dieckgraeff Road and drainage improvements in the low-lying areas of the alluvial fan.

At the March 29, 2022 regular meeting, the City of Seward council approved Resolution 2022-040, Approving The Re-Appropriation Of \$75,576.87 In Funding By The Kenai Peninsula Borough Towards The Japanese Creek Flood Mitigation Project.

The city resolution is attached.

Please let me know if you need additional information.

Stephanie Presley Program Lead, CFM 907.224.3340

From: Cinereski, Heather Sent: Tuesday, April 5, 2022 9:47 AM To: Presley, Stephanie <spresley@kpb.us> Subject: Ordinance 2021-19-43

> 1. SBCFSA Board Recommendation on Ordinance 2021-19-43, Redirecting Excess Funds Appropriated for the U.S. Army Corps of Engineers Japanese Creek Feasibility Study to Complete Flood Hazard and Alternatives Analyses, and Design Plans for Flood Risk Mitigation Projects

MOTION TO RECOMMEND: Atwood moved to recommended approval of this ordinance re-directing study funds to continue mitigation in the lower reaches including flood hazard analyses and updated mapping, lower reach alternative analyses, and

construction ready design plans for Dieckgraeff Road and drainage improvements in the low-lying areas of the alluvial fan. Taylor seconded.

Heather Cínereskí

Service Area Administrative Assistant Seward-Bear Creek Flood Service Area PO Box 1554 Seward, Alaska 99664 PH (907) 224-9515 www.kpb.us/service-areas/sbcfsa



Sponsored by: Bower

#### CITY OF SEWARD, ALASKA RESOLUTION 2022-040

#### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEWARD, ALASKA, APPROVING THE RE-APPROPRIATION OF \$75,576.87 IN FUNDING BY THE KENAI PENINSULA BOROUGH TOWARDS THE JAPANESE CREEK FLOOD MITIGATION PROJECT

WHEREAS, Resolution 2020-009 approved the appropriation of \$135,000 towards the City of Seward's share of the funding for the Japanese Creek Feasibility Study; and

WHEREAS, this project was a joint collaboration between the City of Seward, United States Army Corps of Engineers, Kenai Peninsula Borough, and the Seward Bear Creek Flood Service Area; and

WHEREAS, the project produced a feasibility study which informed the participating entities on next steps which are targeted at improving flood control; and

WHEREAS, the project came in under its forecasted \$900,000 budget and \$250,000 is scheduled to be returned to the project sponsors; and

WHEREAS, the Borough will be receiving the City's portion of the refund from the project remaining balance; and

WHEREAS, the Kenai Peninsula Borough is considering an ordinance on April 5, 2022 to redirect the remaining funds to a project to continue work on the design and implementation of additional flood control measures; and

WHEREAS, this project will have a positive impact on flood control on areas affected by Japanese Creek.

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

Section 1. The City Manager is authorized to agree to the re-appropriation by the Kenai Peninsula Borough of \$75,576.87 in funds towards the Japanese Creek Mitigation and Flood Control Project.

Section 2. This resolution shall take effect immediately upon adoption.

**PASSED AND APPROVED** by the City Council of the City of Seward, Alaska, this 29<sup>th</sup> day of March 2022.

#### CITY OF SEWARD, ALASKA RESOLUTION 2022-040

THE CUTY/OF SEWARD, ALASKA

Christy Terry, Mayor

AYES:	Osenga, Mc	Clure, C	Casagr	anda,	Calho	on, W	ells, T	Гerry
NOES:	None		2 . T					
ABSENT:	DeMoss						,	
ABSTAIN:	None		1.					

### ATTEST:

lon

Brenda J. Ballow, MMC City Clerk



#### **City Council Agenda Statement**

Meeting Date:	March 29, 2022	
То:	City Council	
From:	Janette Bower, City Manager	
Agenda Item:	Resolution 2022-040: Approving the Re-Appropriation Funding By the Kenai Peninsula Borough Towards the Ja Mitigation Project	

#### Background and justification:

Resolution 2020-009 approved the appropriation of \$135,000 towards the City of Seward's share of the funding for the Japanese Creek Feasibility Study. This project was a joint collaboration between the City of Seward, United States Army Corp. of Engineers, Kenai Peninsula Borough, and the Seward Bear Creek Flood Service Area. The project produced a feasibility study which informed the participating entities on next steps which are targeted at improving flood control (see the attached technical report). The forecasted project cost was \$900,000 and actually came in under budget.

The next phase in the project is for the borough to contract with a private entity to move forward with mitigation in the lower portion of Japanese Creek, continuing flood risk, mapping efforts, and production of shovel ready plans for Dieckgraeff Road. This resolution provides approval to the Kenai Peninsula Borough to redirect the City of Seward's "reimbursement" of \$75,576.87 towards continuing work on the mitigation project.

Comprehensive and Strate	gić Plar	n Consister	ncy Inf	ormatic	) <b>n</b>	
This legislation is consistent with (citation listed Comprehensive Natural Hazards 14.2 Plan:	I):			s. 		
Strategic Plan:Other:						· · · · ·
						, , , , , , , , , , , , , , , , , , , ,
Certifica	ation of	Funds				
Total amount of funds listed in this legislation:	\$	8 . C				
This legislation ( $\checkmark$ ):	\$					
Creates expenditure in amount of:	\$		· · ·			
Creates a savings in the amount of: x Has no fiscal impact						
Funds are (✓):						
Budgeted Line item(s):					· · · ·	
X Not applicable				-		(

Unassigned Fund Balance and Available Unrestricted Cash Balance Information					
Fun	d (√):		_		
X	General	SMIC	Electric	Wastewater	
	Boat Harbor	Parking	Water	Healthcare	
	Motor Pool	Other			
Unassigned Fund Balance*: \$ *unaudited numbers Available Unrestricted Cash Balance*: \$ Finance Signature:					
Att	orney Review	* ************************************	Adminis	tration Recommenda	ation
	Yes Not applicable	X Adopt Res	olution		

Introduced by:	Mayor
Date:	04/05/22
Hearing:	04/19/22
Action:	
Vote:	

#### KENAI PENINSULA BOROUGH ORDINANCE 2021-19-44

#### AN ORDINANCE APPROPRIATING FUNDS FROM THE SOUTH KENAI PENINSULA HOSPITAL SERVICE AREA FUND BALANCE FOR THE SOUTH PENINSULA HOSPITAL'S PHASE 1 SECURITY UPGRADE PROJECT

- **WHEREAS,** SEM Security Consultants performed a physical security assessment of South Peninsula Hospital (the Hospital) during 2021; and
- **WHEREAS,** the consulting group identified several vulnerabilities in the Hospital's current physical environment which require improvement to ensure greater safety for patients and staff; and
- **WHEREAS,** it is a strategic priority of the Hospital's management to provide the safest possible healing environment for our patients and staff; and
- **WHEREAS,** SEM Security Consultant's report provided details on the recommended security improvements which should be made to better secure the Hospital's campus; and
- WHEREAS, the estimated cost to implement these security improvements is \$105,000; and
- **WHEREAS,** the Hospital's management has requested South Kenai Peninsula Hospital Service Area fund balance be appropriated to fund the Phase 1 Security Upgrade project in an amount not to exceed \$105,000; and
- WHEREAS, at its meeting on March 10, 2022, the South Kenai Peninsula Hospital Service Area Board, by resolution, recommended approval of this ordinance; and
- **WHEREAS,** at its meeting on March 23 2022, the SPHI Board of Directors recommended approval by the passage of SPH Resolution 2022-05;

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

SECTION 1. Funds in the amount of \$105,000 are appropriated from the South Kenai Peninsula Hospital Service Area Fund fund balance account number 602.27910 to be transferred to the South Peninsula Hospital Service Area Capital Project Fund account 491.81210.22SEC.49999 to fund the South Peninsula Hospital's Phase 1 Security upgrade project. **SECTION 2.** That the appropriations made in this ordinance are of a project length nature and as such do not lapse at the end of any particular fiscal year.

**SECTION 3.** This ordinance shall be effective immediately upon enactment.

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

ATTEST:

Brent Johnson, Assembly President

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

### Kenai Peninsula Borough

**Finance Department** 

### MEMORANDUM

TO:	Brent Johnson, Assembly President Members, Kenai Peninsula Borough Assembly
THRU:	Charlie Pierce, Mayor ak
FROM:	Brandi Harbaugh, Finance Director BH John Hedges, Purchasing & Contracting Director JH
DATE:	March 24, 2022
RE:	Ordinance 2021-19 <u>44</u> , Appropriating Funds from the South Kenai Peninsula Hospital Service Area Fund Balance to Fund the SPH Phase I Security Upgrade Project (Mayor)

The Kenai Peninsula Borough (Borough) owns and provides for the operation of South Peninsula Hospital (the Hospital) through the South Kenai Peninsula Hospital Service Area. South Peninsula Hospital Inc. (SPHI) operates the hospital and other medical facilities by way of an Operating Agreement with the Borough.

SEM Security Consultants performed a physical security assessment of the Hospital during 2021. The consulting group identified several vulnerabilities in the Hospital's current physical environment which require improvement to ensure greater safety for patients and staff. SEM Security Consultant's report provided details on the recommended security improvements which should be made to better secure the Hospital's campus. The estimated cost to implement these security improvements is \$105,000.

In March 2022, the borough received notice from SPHI. requesting \$105,000 to fund the South Peninsula Hospital Phase 1 Security Upgrade project. This ordinance appropriates funds of \$105,000 to be transferred from the South Peninsula Hospital Service Area Fund fund balance to the South Peninsula Hospital Service Area Capital Project Fund for the SPH Phase I Security Upgrade Project.

The South Kenai Peninsula Hospital Service Area Board recommended approval of this ordinance at its March 10, 2022 meeting. This ordinance is scheduled to

come before the SPHI's Board at its meeting scheduled for March 23, 2022. SPHI's recommendation will be provided to the assembly prior to public hearing on this matter.

Your consideration of this ordinance is appreciated.

F	FINANCE DEPARTMENT UNDS/ACCOUNT VERIFIED
Account:	602.27910
Amount:	\$ 105,000.00
Ву:	Date: 3/21/2022

Introduced by: Date: Action: Vote: Yes - 1

### SOUTH PENINSULA HOSPITAL BOARD RESOLUTION 2022-05

### A RESOLUTION OF THE SOUTH PENINSULA HOSPITAL BOARD OF DIRECTORS APPROVING THE REQUEST OF UNOBLIGATED SERVICE AREA FUNDS TO SUPPORT PHASE 1, SECURITY PROJECT EXPENDITURES

WHEREAS, SEM Security Consultants performed a physical security assessment of South Peninsula Hospital (the Hospital) during 2021, and

WHEREAS, the consulting group identified several vulnerabilities in the Hospital's current physical environment which require improvement to ensure greater safety for patients and staff, and

WHEREAS, it is a strategic priority of Hospital management to provide the safest possible healing environment for our patients and staff, and

WHEREAS, SEM Security Consultant's report provided details on the recommended security improvements which should be made to better secure our campus, and

WHEREAS, the cost to implement these security improvements is estimated at \$105,000; and

WHEREAS, a surplus of unobligated Service Area Fund Balance exists; and

WHEREAS, SPH Management would like to request that a portion of these unobligated monies be appropriated to the Phase 1 Security Upgrade project in an amount not to exceed \$105,000; and

WHEREAS, the Phase 1 Security Upgrade Project was discussed at Finance Committee on March 17, 2022.

## NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF SOUTH PENINSULA HOSPITAL:

- 1. That the South Peninsula Hospital Board of Directors approves the Phase 1, Security Upgrade Project in the amount of \$105,000.
- 2. That the South Kenai Peninsula Service Area Board make a recommendation to approve the use of unobligated Service Area Funds in the amount of \$105,000 for the Phase 1, Security Upgrade Project.
- That the South Peninsula Hospital Board of Directors requests that the Kenai Peninsula Borough appropriate \$105,000 in unobligated Service Area Funds for the Phase 1, Security Upgrade Project.

### PASSED AND ADOPTED BY THE BOARD OF DIRECTORS OF SOUTH PENINSULA AT ITS MEETING HELD ON THIS 23rd DAY OF MARCH, 2022.

ATTEST:

Julle Woodworth, Board Secretary

Kelly Cooper, Board President

### SOUTH KENAI PENINSULA HOSPITAL SERVICE AREA BOARD RESOLUTION 2022-03

### A Resolution of the South Kenai Peninsula Hospital Service Area Board Recommending Approval of the Request by the South Peninsula Hospital, Inc. Board of Directors for Un-obligated South Kenai Peninsula Hospital Service Area Funds for Phase 1 Security Project Expenditures

**WHEREAS**, SEM Security Consultants performed a physical security assessment of South Peninsula Hospital, Inc. (SPHI) during 2021; and

**WHEREAS**, the consulting group identified several vulnerabilities in SPHI's current physical environment which require improvement to ensure greater safety for patients and staff; and

**WHEREAS**, it is a strategic priority of SPHI management to provide the safest possible healing environment for our patients and staff; and

**WHEREAS**, SEM Security Consultant's report provided details on the recommended security improvements which should be made to better secure our campus; and

WHEREAS, the cost to implement these security improvements is estimated at \$105,000; and

**WHEREAS**, SPHI has canceled several capital projects in prior years, which has resulted in a surplus of un-obligated South Kenai Peninsula Hospital Service Area Fund Balance; and

**WHEREAS**, SPHI would like to request that a portion of these un-obligated monies be appropriated to the Phase 1 Security Upgrade project in an amount not to exceed \$105,000; and

**WHEREAS**, the Phase 1 Security Upgrade Project will be reviewed and is expected to be approved at the SPHI Board of Directors' Finance Committee on March 17, 2022; and

**WHEREAS**, this resolution will be reviewed and expected to be approved by the SPHI Board of Directors on March 23, 2022.

### NOW THEREFORE BE IT RESOLVED THAT:

The South Kenai Peninsula Hospital Service Area Board—assuming the above noted SPHI Finance Committee and Board of Directors approvals take place as anticipated—hereby respectfully recommends the approval of the South Peninsula Hospital, Inc. Board of Directors' request to appropriate \$105,000 in un-obligated South Kenai Peninsula Hospital Service Area Funds for the Phase 1 Security Upgrade project.

Adopted by the South Kenai Peninsula Hospital Service Area Board, March 10, 2022.

Helen Armstrong, Chair O South Kenai Peninsula Hospital Service Area Board

Introduced by:	Mayor
Date:	04/05/22
Hearing:	04/19/22
Action:	
Vote:	

### KENAI PENINSULA BOROUGH ORDINANCE 2021-19-45

### AN ORDINANCE APPROPRIATING FUNDS FROM THE ROAD SERVICE AREA OPERATING FUND BALANCE FOR SNOW REMOVAL, SANDING AND ROAD MAINTENANCE

- WHEREAS, due to higher than projected costs associated with snow plowing, winging and sanding across the Kenai Peninsula, the Road Service Area is seeking supplemental funding to ensure there are sufficient funds on hand through the end of the fiscal year for various road maintenances tasks; and
- WHEREAS, the Road Service Area Operating Fund has fund balance available to support the appropriation; and
- WHEREAS, the Road Service Area Board, at its meeting held on April 12, 2022, recommended ;

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

**SECTION 1.** That \$400,000 is appropriated from the Road Service Area Fund, fund balance to the following account for additional snow plowing, sanding and road maintenance for the remainder of the fiscal year:

236.33950.00000.43952, Road Maintenance.

**SECTION 2.** That upon enactment this ordinance is effective retroactively on March 1, 2022.

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

ATTEST:

Brent Johnson, Assembly President

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

### Kenai Peninsula Borough Road Service Area

Maintenance (Mayor)

### MEMORANDUM

TO: Brent Johnson, Assembly President Members, Kenai Peninsula Borough Assembly
THRU: Charlie Pierce, Mayor IK Brandi Harbaugh, Finance Director BK
FROM: Dil Uhlin, Road Service Area Director IU
DATE: March 24, 2022
RE: Ordinance 2021-19-145, Appropriating Funds from the Road Service Area Operating Fund Balance for Snow Removal, Sanding and Road

The attached ordinance appropriates \$400,000 from the Road Service Area Fund fund balance for snow removal, sanding and road maintenance for the reminder of the fiscal year.

Snowfall across the Peninsula has been above-average this fiscal year and costs associated with snow removal and sanding are higher than projected. Therefore, the Road Service Area is seeking a supplemental appropriation from the fund balance in order to ensure there are sufficient funds on hand through the end of the fiscal year for snow removal and sanding.

Your consideration of this ordinance is appreciated.

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No. <u>236.27910</u>	
Amount <u>\$400,000</u>	
By: Date:	

79

Introduced by:	Mayor
Date:	04/05/22
Hearing:	04/19/22
Action:	
Vote:	

### KENAI PENINSULA BOROUGH ORDINANCE 2021-19-46

### AN ORDINANCE AMENDING THE GRANTEE FOR THE HOMELESS SHELTER FUNDS RELATED TO THE STATE OF ALASKA HEALTHY AND EQUITABLE COMMUNITIES PROGRAM

- **WHEREAS,** Ordinance 2021-19-32, enacted on January 4, 2022, appropriated \$53,940.61 as a grant to be awarded to the Kenai Peninsula Homeless Coalition; and
- **WHEREAS,** the Homeless Coalition is not yet recognized by the State of Alaska or the federal government as a legal entity; and
- **WHEREAS,** the Homeless Coalition will not be conducting the activities related to the grant funds issued under the Healthy and Equitable Communities Program; and
- **WHEREAS,** Love INC of the Kenai Peninsula will be the organization responsible for conducting the activities related to the grant funds issued under the Healthy and Equitable Communities Program; and
- WHEREAS, the intent and purpose of the funds remain unmodified; and
- WHEREAS, Section 3 of Ordinance 2021-19-32 should be amended to allow for the distribution of grant funds in the amount of \$53,940.61 to Love INC on behalf of the Kenai Peninsula Homeless Coalition;

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

- **SECTION 1.** Ordinance 2021-19-32 section 3 is hereby amended to read "That the Mayor is authorized to distribute \$53,940.61 to Love INC of the Kenai Peninsula to support homelessness facilities from the Healthy and Equitable Communities Program award from the State of Alaska."
- **SECTION 2.** That federal pass-thru funds in the amount of \$153,940.61 were appropriated through Ordinance 2021-19-32 and remain appropriated to account 271.94910.22VAC.49999 for the purpose of the Healthy and Equitable Communities Grant Program.

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

**SECTION 4.** That this ordinance becomes effective immediately upon enactment.

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

ATTEST:

Brent Johnson, Assembly President

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

### Kenai Peninsula Borough Community & Fiscal Projects

### MEMORANDUM

to:	Brent Johnson, Assembly President Members, Kenai Peninsula Borough Assembly	
THRU:	Charlie Pierce, Mayor 🥼 Brandi Harbaugh, Finance Director 🕅	
FROM:	Rachel Chaffee, Community & Fiscal Projects Manager $$ K	
DATE:	March 24, 2022	
RE:	Ordinance 2021-19- $40$ , Amending the Grantee for the Homeless Shelter Funds Related to the State of Alaska Healthy and Equitable Communities Program (Mayor)	

This ordinance seeks to amend the grantee from the Kenai Peninsula Homeless Coalition (as originally provided in Ordinance 2021-19-32) to Love INC of the Kenai Peninsula. The intent and purpose of the funds remain unmodified and are still guided by the State of Alaska Healthy and Equitable Communities Grant Administrator and Liaison.

In the process of determining the activities in which the grant funds will be utilized, the Coalition directed Love INC to create the plan to utilize the funds. Further, the Coalition informed the Borough that Love INC will be the organization responsible for reporting and managing the activities of the grant.

After further discussion and review with both organizations, it was determined that the organization that would be responsible for managing, reporting, and overseeing the activities related to the federal funds distributed through this grant is Love INC of the Kenai Peninsula.

Your support of this ordinance is appreciated.

FINANCE DEPARTMENT FUNDS/ACCOUNT VERIFIED		
Account: 271.94910.22VAC.49999		
Amount: <u>\$ 53,9'40.6</u> '		
By: Date:		

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.

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Brent Johnson, Assembly President



Yes:Bjorkman, Chesley, Cox, Derkevorkian, Ecklund, Elam, Hibbert, Tupper, JohnsonNo:None

Absent: None

Introduced by:	Mayor
Date:	04/05/22
Hearing:	04/19/22
Action:	
Vote:	

### KENAI PENINSULA BOROUGH ORDINANCE 2021-19-47

### AN ORDINANCE APPROPRIATING FUNDS FROM THE EQUIPMENT REPLACEMENT FUND FOR PURCHASE OF A LOADER AND SKID-STEER FOR THE HOMER TRANSFER FACILITY

- **WHEREAS,** the Kenai Peninsula Borough stopped contract management of the Homer Transfer Facility in November of 2021 and began operating and managing it with Borough personnel; and
- **WHEREAS**, equipment being used to operate the facility was transferred from other operations and need to return to their previous uses; and
- WHEREAS, a loader and skid-steer are needed to operate the facility; and
- **WHEREAS,** pricing has been obtained through cooperative purchasing contracts for purchase of a loader and skid-steer; and
- **WHEREAS,** funds are available in the Equipment Replacement Fund to finance the equipment purchases and annual payments are proposed to commence in FY2023;

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

- **SECTION 1.** That \$400,000 is appropriated from the Equipment Replacement Fund account 705.27920 to account 705.94910.22E09.49999 for purchase of a loader and skid-steer purchase.
- **SECTION 2.** That the appropriations made in this ordinance are of a project length nature and as such do not lapse at the end of any particular fiscal year.
- **SECTION 3.** That this ordinance shall be effective immediately upon enactment.

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

ATTEST:

Brent Johnson, Assembly President

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

### FKenai Peninsula Borough Solid Waste Department

### MEMORANDUM

το:	Brent Johnson, Assembly President Members, Kenai Peninsula Borough Assembly		
THRU:	Charlie Pierce, Mayor & Brandi Harbaugh, Finance Director BH John Hedges, Purchasing and Contracting Director JH		
FROM:	Lee Frey, Solid Waste Director <sup>LF</sup>		
DATE:	March 24, 2022		
RE:	Ordinance 2021-19- <b>47</b> Appropriating Funds from the		

RE: Ordinance 2021-19-47 Appropriating Funds from the Equipment Replacement Fund for Purchase of a Loader and Skid-Steer for the Homer Transfer Facility (Mayor)

The Homer Transfer Facility has been operated by Kenai Peninsula Borough (Borough) personnel since November of 2021. Current equipment that is being used onsite has been mobilized from the Central Peninsula Landfill to keep the facility operating. The existing equipment is needed for other uses within the Solid Waste Department and equipment should be purchased for Borough operations at the Homer Transfer Facility

A loader and skid-steer are being recommended for purchase. The loader will be used for managing the waste at the tipping floor, snow clearing, managing inert waste and other needs as they occur. The skid-steer will primarily be used for recycling operations and snow clearing, but will also serve as a backup on the tipping floor. Quotes for the equipment through cooperative purchasing contracts have been obtained and separate approvals for their purchase will be contingent on appropriation of the funding.

The Solid Waste Department recommends appropriation of \$400,000 from the Equipment Replacement Fund (ERF) for purchase of a loader (\$310,000) and skidsteer (\$90,000) for Homer Transfer Facility operations. Annual Payments to the ERF are proposed to commence in FY2023.

Your consideration of this ordinance is appreciated.

	FINANCE DEPARTMENT FUNDS VERIFIED
	Acct. No.: 705.27920
	Amount: \$ <u>400,000</u>
Ву: _	Date: 3/22/2022

Introduced by:	Mayor
Date:	04/05/22
Hearing:	04/19/22
Action:	
Vote:	

### KENAI PENINSULA BOROUGH ORDINANCE 2022-06

### AN ORDINANCE AUTHORIZING THE NEGOTIATED SALE OF 183.234 ACRES IN COOPER LANDING AS PART OF THE STERLING HIGHWAY MILE POST 45-60 REALIGNMENT PROJECT TO THE STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES FOR A NEGOTIATED AMOUNT OVER APPRAISED VALUE

- WHEREAS, the State of Alaska Department of Transportation and Public Facilities (DOT&PF) has a planned project for the realignment of that portion of the Sterling Highway located between Mileposts 45-60 and as a result has initiated right-of-way acquisition negotiations with property owners located within the proposed right-of-way realignment; and
- WHEREAS, the Kenai Peninsula Borough (KPB) is the fee simple owner of those lands comprising Project Parcels 1, 2, 3, 16, 11, 13, 17, 18, 19A, 19B, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and retains Municipal Entitlement Management Authority over Project Parcel 32 as further described in Section 1 of this Ordinance; and
- WHEREAS, DOT&PF has contracted with Black-Smith, Bethard & Carlson, LLC (Anchorage) for independent third-party appraisals of the identified 183.234 acres of KPB land (Project Parcels) proposed as right-of-way under this project; and
- **WHEREAS,** DOT&PF has presented to KPB a formal offer to purchase said right-of-way parcels for a negotiated amount of \$2,122,900.00, contingent upon assembly approval and a borough signed agreement by April 27, 2022; and
- WHEREAS, entering into a negotiated sale with DOT&PF for the referenced right-of-way parcels aids in the mitigation of traffic safety concerns for the community of Cooper Landing, in addition to providing necessary efficiency and safety upgrades and utility to the Sterling Highway, benefitting borough residents and visitors; and
- WHEREAS, the Cooper Landing Advisory Planning Commission, at its regular meeting of April 6, 2022, recommended \_\_\_\_\_\_.
- WHEREAS, the Kenai Peninsula Borough Planning Commission, at its regular meeting of April 11, 2022, recommended \_\_\_\_\_\_.

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

**SECTION 1.** That the real property described below is owned by or under Management Authority of KPB and is identified by DOT&PF as necessary right-of-way acquisitions for completion of the Sterling Highway MP45-60 project.

Project Parcel	KPB Parent Parcel ID	Classification	Appraisal Effective Date	Right of Way Acreage	Appraised Value
	11912509				
1, 2, 3,	11912614	Preservation	2/01/2022	12.626	\$44,200.00
16	11912612	1 reservation	2/01/2022	12.020	φττ,200.00
	11912610				
11	11915007	Unclassified	10/25/2021	.28	\$13,700.00
13, 17	11912704	Preservation	2/01/2022	74.167	\$736,400.00
18	11907126	Preservation	12/03/2021	9.177	\$113,300.00
19A,	11907128	Recreational	2/01/2022	51.363	\$359,900.00
19B, 20	11907101	Preservation	2/01/2022	51.505	\$339,900.00
22	11907133	Recreational	12/03/2021	1.378	\$12,100.00
23	11907136	Residential	12/03/2021	.525	\$9,000.00
24	11907137	Residential	12/03/2021	1.103	\$32,100.00
25	11907138	Residential	12/03/2021	1.631	\$63,900.00
26	11907139	Residential	12/03/2021	1.667	\$55,700.00
27	11907140	Residential	12/03/2021	2.259	\$58,500.00
28	11907141	Residential	12/03/2021	2.325	\$54,900.00
29	11907142	Residential	12/03/2021	.406	\$26,100.00
20.21	11907144	Recreational	10/02/2021	16 457	¢127.400.00
30, 31	11907143	Preservation	12/03/2021	16.457	\$127,400.00
20	11007501(14)	Recreational	2/01/2022	4.264	¢15,000,00
32	11907501(MA)	Preservation	2/01/2022		\$15,000.00
			Total:	183.234	\$1,722,200.00

(MA=Municipal Entitlement Management Authority)

- **SECTION 2.** That the assembly finds that conveying the right-of-way areas defined as the project parcels in Section 1, according to the terms in Section 4, is in the best interest of the borough based on the following:
  - a. The KPB Assembly adopted Resolution 2016-049 supporting the subject Juneau Creek Alternative for the Sterling Highway Milepost 45-60 Realignment Project.
  - b. KPB will receive adequate and just compensation for the conveyance of the right-of-way parcels and associated impacts.

- c. Disposal of subject project parcels to DOT&PF is consistent with the 1996 Cooper Landing Land Use Plan.
- d. The proposed sale would result in necessary efficiency and safety upgrades to the Sterling Highway benefiting residents and visitors to the borough.
- **SECTION 3.** That the assembly makes an exception to KPB 17.10.110 (notice of disposition). This exception is based on the following findings of fact pursuant to KPB 17.10.230:
  - 1. "Special circumstances or conditions exist".
    - a. The purpose of KPB 17.10.110 advertising requirement is to notify the public of an opportunity to purchase or lease KPB land. Advertising this negotiated sale to DOT&PF will not serve a useful purpose, as DOT&PF is a state governmental agency and the only entity able to accomplish the safety upgrades to the Sterling Highway. Compliance with the advertising requirement would cause delays that negatively impact the project and may impose unnecessary expense on KPB.
  - 2. "That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this chapter."
    - a. For this negotiated sale to DOT&PF, a state governmental agency, an exception to the notice requirement is necessary to keep the Sterling Highway Milepost 45-60 Realignment Project on track without unnecessary delay. As such, it furthers the preservation and enjoyment of KPB's property right and governmental interest to ensure the efficiency and safety of the Sterling Highway which will benefit KPB's residents and visitors.
  - 3. "That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area".
    - a. The proposed disposition is advertised by publication of the ordinance in newspapers of general circulation and on the borough's web page. Notice of the proposed disposition is also published by the Planning Commission agenda in newspapers of general circulation, and a public hearing is held at the Planning Commission level. Additional notice is not necessary to comply with the intent of KPB 17.10 or to protect the public welfare. An exception to the notice requirement will support the welfare of the general public by reducing the delay of the overall Sterling Highway Milepost 45-60

Realignment Project which, in turn, will support the welfare of the general public through necessary safety and efficiency upgrades to the Sterling Highway.

- **SECTION 4.** That based on the foregoing, the mayor is hereby authorized, pursuant to KPB 17.10.100(I) to sell and convey, through quitclaim deed, the land described in Section 1 above to the State of Alaska Department of Transportation and Public Facilities for the negotiated sales price of \$2,122,900.00. DOT&PF shall be responsible for any and all related closing costs and recording fees. All other applicable terms and conditions of KPB 17.10 shall apply to this sale unless inconsistent with this ordinance.
- **SECTION 5**. That all sale proceeds shall be deposited into the Land Trust Investment Fund.
- **SECTION 6.** That the Mayor is authorized to sign any document necessary to effectuate this ordinance.
- **SECTION 7.** This ordinance is effective immediately upon enactment.

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

ATTEST:

Brent Johnson, Assembly President

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Planning Department – Land Management Division

### MEMORANDUM

- TO: Brent Johnson, Assembly President Members, Kenai Peninsula Borough Assembly
- THRU: Charlie Pierce, Borough Mayor & for (f Melanie Aeschliman, Planning Director Marcus A Mueller, Land Management Officer
- FROM: Aaron Hughes, Land Management Agent ##
- **DATE:** April 6, 2022
- **RE:** Amendment to Ordinance 2022-06, Authorizing the Negotiated Sale of 183.234 Acres in Cooper Landing as Part of the Sterling Highway Mile Post 45-60 Realignment Project to the State of Alaska Department of Transportation and Public Facilities for a Negotiated Amount Over Appraised Value (Mayor) (Hearing on 04/19/22)

This amendment to Ordinance 2022-06 is requested due an error discovered in the total acreage of the right-of-way sale parcels (the total acreage is 180.281).

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

> Amend the title, as follows:

AN ORDINANCE AUTHORIZING THE NEGOTIATED SALE OF **[183.234]** <u>180.281</u> ACRES IN COOPER LANDING AS PART OF THE STERLING HIGHWAY MILE POST 45-60 REALIGNMENT PROJECT TO THE STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES FOR A NEGOTIATED AMOUNT OVER APPRAISED VALUE

> Amend the third Whereas clause, as follows:

WHEREAS, DOT&PF has contracted with Black-Smith, Bethard & Carlson, LLC (Anchorage) for independent third-party appraisals of the identified [183.234] 180.281 acres of KPB land (Project Parcels) proposed as right-ofway under this project; and April 6, 2022 Page -2-Re: Amendment to O2022-06

- > Amend Section 1, as follows:
- **SECTION 1.** That the real property described below is owned by or under Management Authority of KPB and is identified by DOT&PF as necessary right-of-way acquisitions for completion of the Sterling Highway MP45-60 project.

Project Parcel	KPB Parent Parcel ID	Classification	Appraisal Effective Date	Right of Way Acreage	Appraised Value
1, 2, 3, 16	11912509 11912614 11912612	Preservation	2/01/2022	[ <del>12.626</del> ]	\$44,200.00
_	11912610			<u>13.279</u>	
11	11915007	Unclassified	10/25/2021	.28	\$13,700.00
13, 17	11912704	Preservation	2/01/2022	74.167	\$736,400.00
18	11907126	Preservation	12/03/2021	9.177	\$113,300.00
19A, 19B, 20	11907128 11907101	Recreational Preservation	2/01/2022	51.363	\$359,900.00
22	11907133	Recreational	12/03/2021	1.378	\$12,100.00
23	11907136	Residential	12/03/2021	.525	\$9,000.00
24	11907137	Residential	12/03/2021	1.103	\$32,100.00
25	11907138	Residential	12/03/2021	1.631	\$63,900.00
26	11907139	Residential	12/03/2021	1.667	\$55,700.00
27	11907140	Residential	12/03/2021	2.259	\$58,500.00
28	11907141	Residential	12/03/2021	2.325	\$54,900.00
29	11907142	Residential	12/03/2021	.406	\$26,100.00
30, 31	11907144 11907143	Recreational Preservation	12/03/2021	16.457	\$127,400.00
32	11907501(MA)	Recreational Preservation	2/01/2022	4.264	\$15,000.00
			Total:	[ <del>183.234</del> ] <u>180.281</u>	\$1,722,200.00

(MA = Municipal Entitlement Management Authority)

Your consideration of the above amendments is appreciated.

Appraised Value (Mayor)

### MEMORANDUM

TO:	Brent Johnson, Assembly President Members, Kenai Peninsula Borough Assembly
THRU:	Charlie Pierce, Borough Mayor & Melanie Aeschliman, Planning Director Marcus A Mueller, Land Management Officer &
FROM:	Aaron Hughes, Land Management Agent 🗚
DATE:	March 23, 2022
RE:	Ordinance 2022- <u>06</u> , Authorizing the Negotiated Sale of 183.234 Acres in Cooper Landing as Part of the Sterling Highway Mile Post 45-60 Realignment Project to the State of Alaska Department of Transportation and Public Facilities for a Negotiated Amount Over

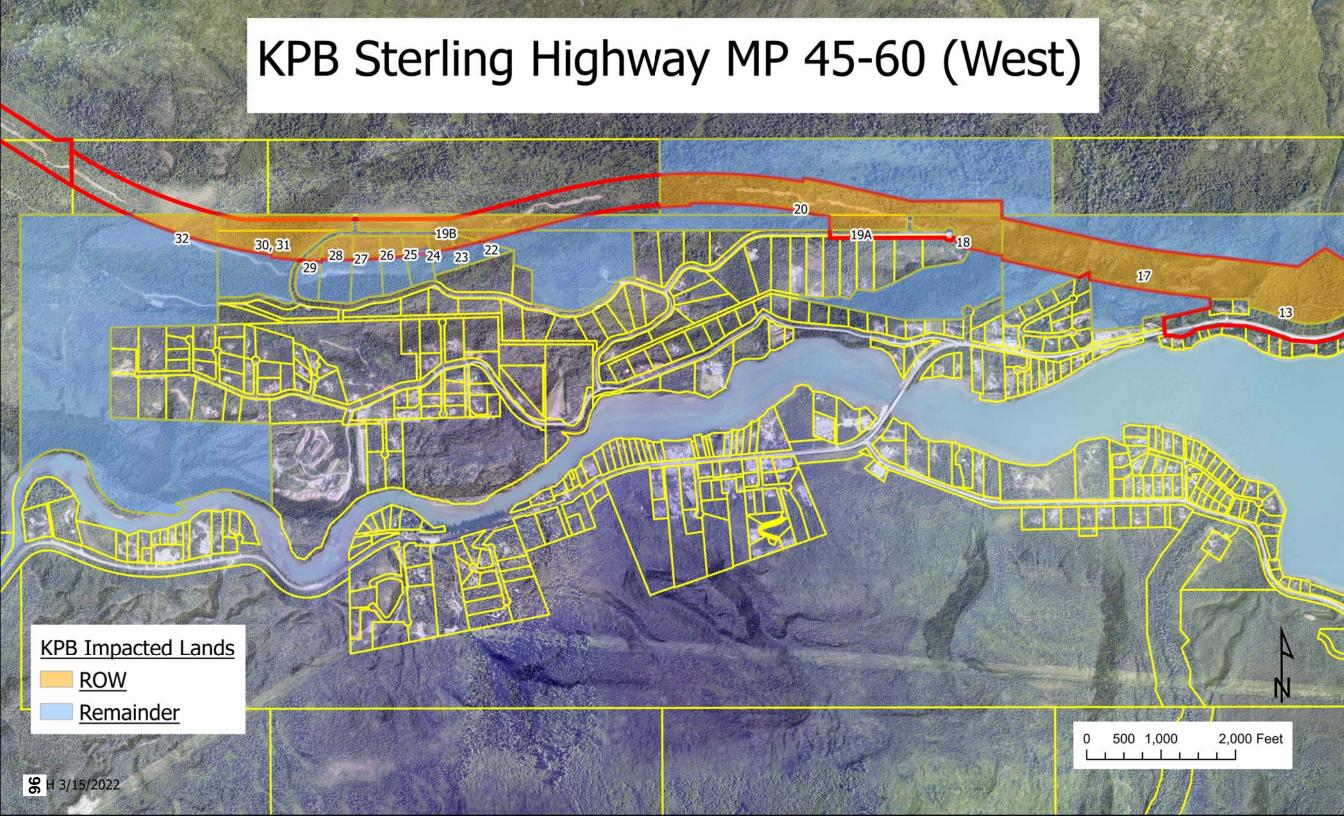
The State of Alaska Department of Transportation and Public Facilities (DOT&PF) has requested the negotiated sale of 183.234 acres of KPB owned lands located in Cooper Landing as right-of-way for the proposed Sterling Highway Mile Post 45-60 Realignment. The proposed right-of-way acquired lands are described as 22 Project Parcels as referenced on the attached maps.

The attached Ordinance would authorize the Mayor to execute all necessary documentation required to convey the above referenced project parcels to DOT&PF in consideration of the negotiated sale price of \$2,122,900.

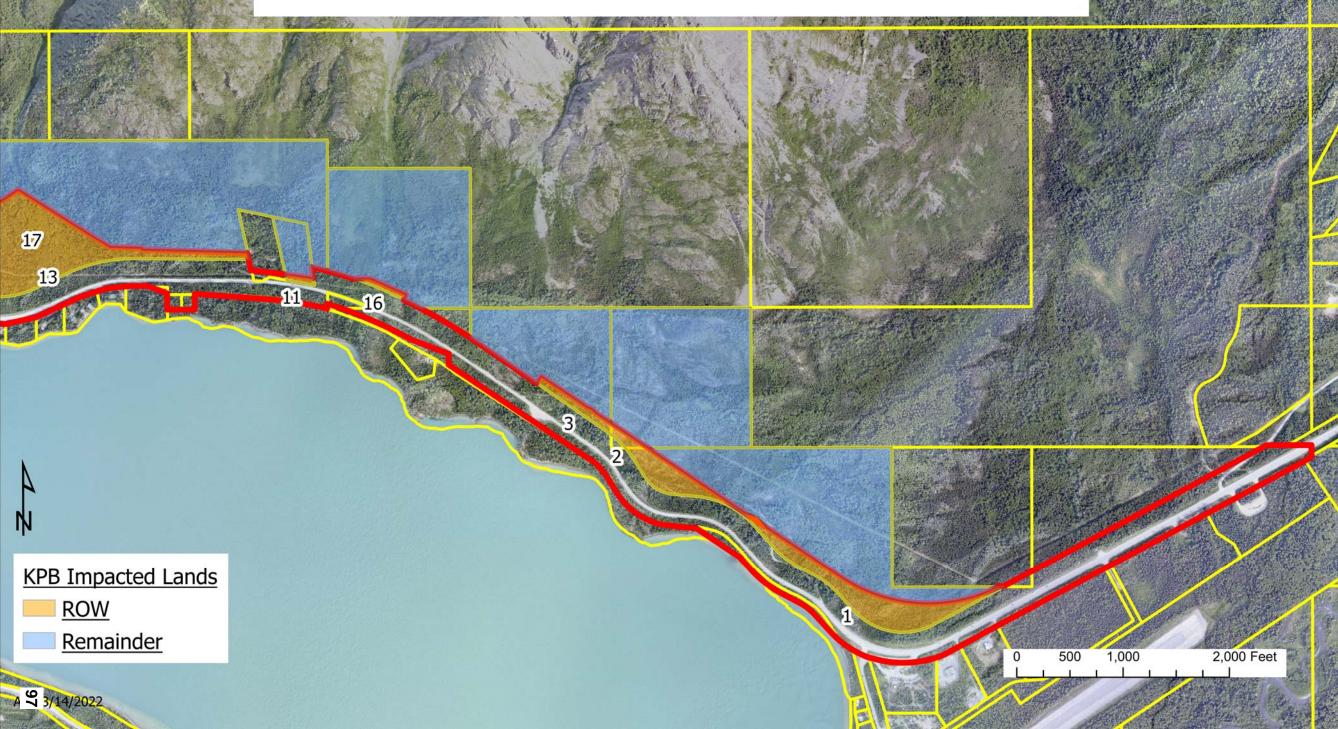
The proposed sale price is the result of negotiations between KPB and DOT&PF after detailed review of DOT&PF contracted independent third-party appraisal on all project parcels. The appraisal valuations for all project parcels totaled \$1,722,200 and the negotiated sale price includes an additional \$400,000 in consideration.

The sale of the Project Parcels to DOT&PF authorized under this ordinance will benefit borough residents and visitors by providing necessary upgrades to the Sterling Highway and is consistent with the 1996 Cooper Landing Land Use Plan.

Your consideration of the attached Ordinance is appreciated.



# KPB Sterling Highway MP 45-60 (East)



#### STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

MEMORANDUM OF AGREEMENT

ATTEN & PUELIC

PROJECT NAME: <u>STERLING HWY MP 45-60</u> SUNRISE TO SKILAK ROAD RECONSTRUCTION

STATE PROJECT #: CFHWY00694

FEDERAL-AID PROJECT #: 0A33029

PARCEL #: 1-3, 11, 13, 16

AGREEMENT has been reached this \_\_\_\_\_\_ day of \_\_\_\_\_\_, 2\_\_\_\_, between the owner(s) of the above designated parcel(s) and the STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES (DOT&PF), for the purchase of said parcel(s). The amount to be paid, and other considerations to be given in full satisfaction of this Agreement, are as follows:

Right-of-Way Acquisition:	\$ 297,100.00
Retention Value	\$ 0

Total Compensation \$297,100.00

Fixtures and improvements purchased: None Land purchased: <u>41.061 acres under CFHWY00694 (184.246 acres total)</u>

Damages are a considerations: X yes no Amount of Damages included in total compensation: \$94,408.00

1. Taxes and Special Assessments, if any, delinquent from former years, and Taxes and Special Assessments for the current year, if due and/or payable, shall be paid by the owner(s).

2. This Memorandum embodies the whole Agreement between the parties hereto as it pertains to the real estate, and there are no promises, terms, conditions or obligations referring to the subject matter hereof, other than as contained herein.

3. The owner(s) hereby agree that the compensation herein provided to be paid includes full compensation for their interest and the interests of their life tenants, remaindermen, reversioners, liens and lessees, and any and all other legal and equitable interest that are or may be outstanding and said owner(s) agree to discharge the same.

4. THIS AGREEMENT shall be deemed a CONTRACT, extending to and binding upon the parties hereto and upon the respective heirs, devisees, executors, administrators, legal representative, successors and assigns of the parties, only when the same shall have been approved by the Regional Chief Right-of-Way Agent on behalf of the DOT&PF.

Other Conditions: None

Of the total amount of compensation hereinabove agreed upon, the sum of  $\frac{297,100.00}{297,100.00}$  shall be paid upon execution and delivery of a good and sufficient:  $\Box$  Warranty Deed  $\Box$  Easement or  $\Box$  Other: <u>Quitclaim deed</u>, and the balance of the compensation, amounting to  $\frac{1}{2}$  shall be paid upon compliance by the owner(s) with the terms hereof.

Disbursement of funds will be made in the following manner:

Payee	Amount of Payment
Kenai Peninsula Borough	\$297,100.00

The Owner(s) certify that there are no known hazardous materials on the property.

The terms of this Agreement are understood and assented to by us and payment is to be made in accordance with the above.

### STATE OF ALASKA DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES

#### KENAI PENINSULA BOROUGH:

 REGIONAL PRE-CONSTRUCTION ENGINEER
 Date

 Note: Regional Pre-Construction Engineer or Designee must sign when construction consideration is involves
 Date

By: Its:

Date

BY:

RIGHT-OF-WAY AGENT

Date

Date

REGIONAL CHIEF RIGHT-OF-WAY AGENT Region: Central

#### STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

MEMORANDUM OF AGREEMENT



#### PROJECT NAME: <u>STERLING HWY MP 45-60</u> SUNRISE TO SKILAK ROAD RECONSTRUCTION

STATE PROJECT #: **Z530140000** 

FEDERAL-AID PROJECT #: 0212015

Total Compensation \$1,825,800.00

PARCEL #: 17-18, 19A & B, 20, 22-32 (15 total)

AGREEMENT has been reached this \_\_\_\_\_\_ day of \_\_\_\_\_\_, 2\_\_\_\_, between the owner(s) of the above designated parcel(s) and the STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES (DOT&PF), for the purchase of said parcel(s). The amount to be paid, and other considerations to be given in full satisfaction of this Agreement, are as follows:

Right-of-Way Acquisition:	\$ 1,425,800.00
Administrative Settlement	\$ 400,000.00
Retention Value	\$ 0

Fixtures and improvements purchased: None

Land purchased: 143.185 acres under Z530140000 (184.246 acres total).

Damages are a considerations:  $\square$  yes  $\square$  no Amount of Damages included in total compensation: \$402,692.00 (Included in ROW Acquisition total of \$1,425,800.00 indicated above and below.)

1. Taxes and Special Assessments, if any, delinquent from former years, and Taxes and Special Assessments for the current year, if due and/or payable, shall be paid by the owner(s).

2. This Memorandum embodies the whole Agreement between the parties hereto as it pertains to the real estate, and there are no promises, terms, conditions or obligations referring to the subject matter hereof, other than as contained herein.

3. The owner(s) hereby agree that the compensation herein provided to be paid includes full compensation for their interest and the interests of their life tenants, remaindermen, reversioners, liens and lessees, and any and all other legal and equitable interest that are or may be outstanding and said owner(s) agree to discharge the same.

4. THIS AGREEMENT shall be deemed a CONTRACT, extending to and binding upon the parties hereto and upon the respective heirs, devisees, executors, administrators, legal representative, successors and assigns of the parties, only when the same shall have been approved by the Regional Chief Right-of-Way Agent on behalf of the DOT&PF.

Other Conditions: ROW to be controlled access without frontage road. KPB Assembly to approve sale by April 27<sup>th</sup>, 2022.

Disbursement of funds will be made in the following manner:

Payee	Amount of Payment
Kenai Peninsula Borough	\$1,825,800.00

By:

Its:

The Owner(s) certify that there are no known hazardous materials on the property.

The terms of this Agreement are understood and assented to by us and payment is to be made in accordance with the above.

### STATE OF ALASKA DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES

#### **KENAI PENINSULA BOROUGH:**

REGIONAL PRE-CONSTRUCTION ENGINEER Date Note: Regional Pre-Construction Engineer or Designee must sign when construction consideration is involves

v	•
1	•
	Y

#### RIGHT-OF-WAY AGENT

Date

Date

Date



#### STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES P.O. BOX 1467 - JUNEAU, ALASKA 99802

DOCUMENT NO.

WARRANT NO. \_ DATE PAID

**PURCHASE VOUCHER** 

PAYEE MUST SIGN THE CERTIFICATION BELOW AND RETURN THIS VOUCHER TO THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES BEFORE PAYMENT CAN BE MADE.

### NAME OF PAYEE: KENAI PENINSULA BOROUGH

### ADDRESS OF PAYEE: c/o DOT&PF RIGHT OF WAY

P.O. Box 196900 Anchorage, AK 99519-6900

Date of Agreement	Project Number	Parcel Number	Type of Document	Amount
	CFHWY00694	1-3, 11, 13, 16 (6 total)	QCD	
	Sterling Highway: MP For the benefit of Ken			
	acquisition as shown on the Memorandum of Agreement and Approved Review Appraisers Determination of Just Compensation.			\$297,100.00
	RETURN W			
GRAND TOTAL (LESS DEDUCTIONS)				\$297,100.00

PAYEE'S CERTIFICATION: I certify that the above bill is correct and just and that payment therefor has not been received:

### **KENAI PENINSULA BOROUGH:**

By:

Its:

APPROVED BY: \_\_\_\_

RIGHT -OF -WAY (NEGOTIATOR)

### ACCOUNTS TO BE CHARGED

ACCOUNT CODE	DEBIT	CREDIT	AMOUNT
	\$297,100.00		\$297,100.00
I certify that the above services were performed or expenses incurred as stated; that they were necessary and proper; that the amounts claimed are just and reasonable; that no part thereof has been paid.	GRAND TOTAL (NET)		\$297,100.00
	PREPARED BY: APPROVE		D FOR PAYMENT
	JES		
	CHECKED BY:	REGIONALCHIEF	RIGHT-OF-WAY AGENT



#### STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES P.O. BOX 1467 - JUNEAU, ALASKA 99802

DOCUMENT NO.

WARRANT NO. \_\_\_\_\_

DATE PAID \_\_\_\_

PURCHASE VOUCHER

PAYEE MUST SIGN THE CERTIFICATION BELOW AND RETURN THIS VOUCHER TO THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES BEFORE PAYMENT CAN BE MADE.

### NAME OF PAYEE: KENAI PENINSULA BOROUGH

### ADDRESS OF PAYEE: c/o DOT&PF RIGHT OF WAY

P.O. Box 196900 Anchorage, AK 99519-6900

Date of Agreement	Project Number Z530140000	Parcel Number 17-18, 19A & B, 20, 22-32 (15 total)	<b>Type of Document</b> QCD	Amount	
	For the benefit of Ker acquisition as shown o Review Appraisers Det	<b>P 45-60 ("Cooper Landing</b> nai Peninsula Borough Pa on the Memorandum of Ag ermination of Just Compen <b>VARRANT REQUESTED</b>	yment for right of way greement and Approved	\$1,825,800.00	
GRAND TOTAL (LESS	GRAND TOTAL (LESS DEDUCTIONS)				

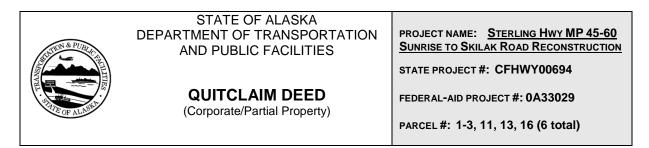
PAYEE'S CERTIFICATION: I certify that the above bill is correct and just and that payment therefor has not been received:

### **KENAI PENINSULA BOROUGH:**

<u>By:</u> Its:

### ACCOUNTS TO BE CHARGED

ACCOUNT CODE	DEBIT	CREDIT	AMOUNT
	\$1,825,800.00		\$1,825,800.00
I certify that the above services were performed or expenses incurred as stated; that they were necessary and proper; that the amounts claimed are just and reasonable; that no part thereof has been paid.	GRAND TOTAL (NET)		\$1,825,800.00
	PREPARED BY: JES	APPROVE	D FOR PAYMENT
	CHECKED BY:	REGIONALCHIEF	RIGHT-OF-WAY AGENT



The GRANTOR, **KENAI PENINSULA BOROUGH**, whose mailing address is 144 North Binkley Street, Soldotna, Alaska 99669, for and in consideration of ten dollars, and other valuable consideration, in hand paid, conveys and quitclaims to the GRANTEE, **STATE OF ALASKA**, **DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES**, whose mailing address is P.O. Box 196900, Anchorage, Alaska 99519, all rights, title, and interest, if any, which it has or may hereinafter acquire in the following-described real estate located in the State of Alaska, all that part of the following-described land:

#### Parcel 1: A portion of :

Tract "H", Alaska State Land Survey 2003-2, according to the official plat thereof, filed under Plat Number 2005-10, records of the Seward Recording District, Third Judicial District, State of Alaska. Containing 13.711 acres, more or less.

### Parcel 2: A portion of :

Tract "F", Alaska State Land Survey 2003-2, according to the official plat thereof, filed under Plat Number 2005-10, records of the Seward Recording District, Third Judicial District, State of Alaska. Containing 0.749 acres, more or less.

### Parcel 3: A portion of :

Tract "E", Alaska State Land Survey 2003-2, according to the official plat thereof, filed under Plat Number 2005-10, records of the Seward Recording District, Third Judicial District, State of Alaska. Containing 1.617 acres, more or less.

#### Parcel 11: A portion of :

Lot 15 of US Survey No. 2688, records of the Seward Recording District, Third Judicial District, State of Alaska. Containing 0.395 acres, more or less.

### Parcel 13: A portion of :

Tract "A", Alaska State Land Survey 2003-2, according to the official plat thereof, filed under Plat Number 2005-10, records of the Seward Recording District, Third Judicial District, State of Alaska. Containing 24.037 acres, more or less.

Parcel 16: A portion of :

Tract "B", Alaska State Land Survey 2003-2, according to the official plat thereof, filed under Plat Number 2005-10, records of the Seward Recording District, Third Judicial District, State of Alaska. Containing 0.552 acres, more or less.

which lies within the right-of-way lines of Alaska Project No. CFHWY00694 delineated as to said tracts of land on the plats attached hereto and made a part hereof of this instrument and designated as Parcels 1-3, 11, 13 and 16. Said parcels, containing 41.061 acres, more or less, in addition to existing right-of-way, is hereby conveyed to the State Of Alaska, Department Of Transportation And Public Facilities.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_.

ATTEST:

Kenai Peninsula Borough:

By: \_\_\_\_\_

Filed for Record at the Request of and Return to: DOT&PF ROW Engineering P.O. Box 196900 Anchorage, AK 99519-6900

State Business-No Charge

### CORPORATE ACKNOWLEDGMENT

STATE OF ALASKA	)
	: ss
3 <sup>RD</sup> JUDICIAL DISTRICT	)

On this \_\_\_\_\_ day of \_\_\_\_\_\_, 2\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared \_\_\_\_\_\_ for the Kenai Peninsula Borough, known to me to be the identical individual who executed the foregoing instrument, and who acknowledged to me that they executed the same freely and voluntarily, with full authority to do so and with full knowledge of its contents, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Notary Public in and for the State of Alaska My Commission Expires: \_\_\_\_\_

### **CERTIFICATE OF ACCEPTANCE**

THIS IS TO CERTIFY that the STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, Grantee herein, acting by and through its Commissioner, hereby accepts for public purposes the real property, or interest therein, described in this instrument and consents to the recordation thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day of \_\_\_\_\_,

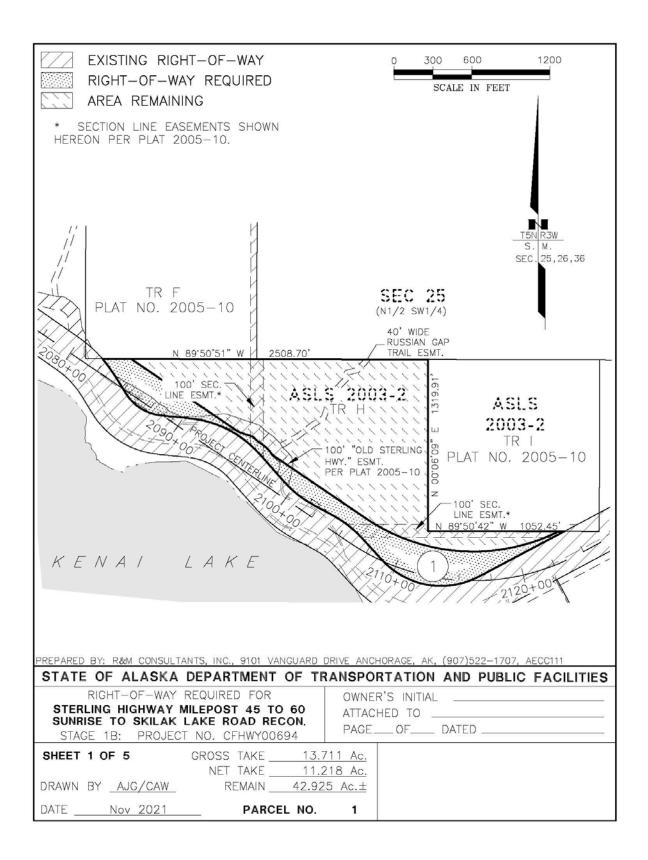
2\_\_\_\_.

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

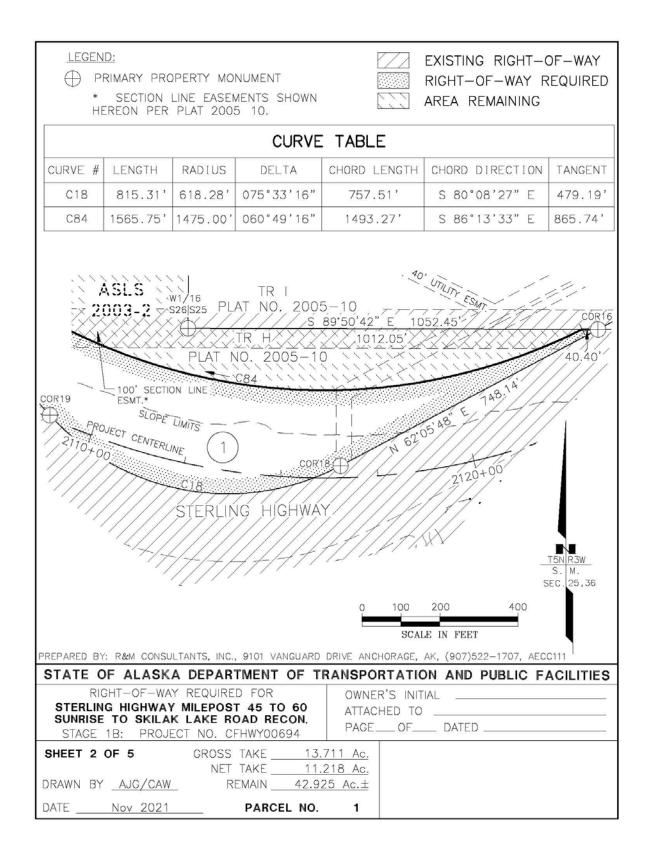
Ву: \_\_\_\_\_

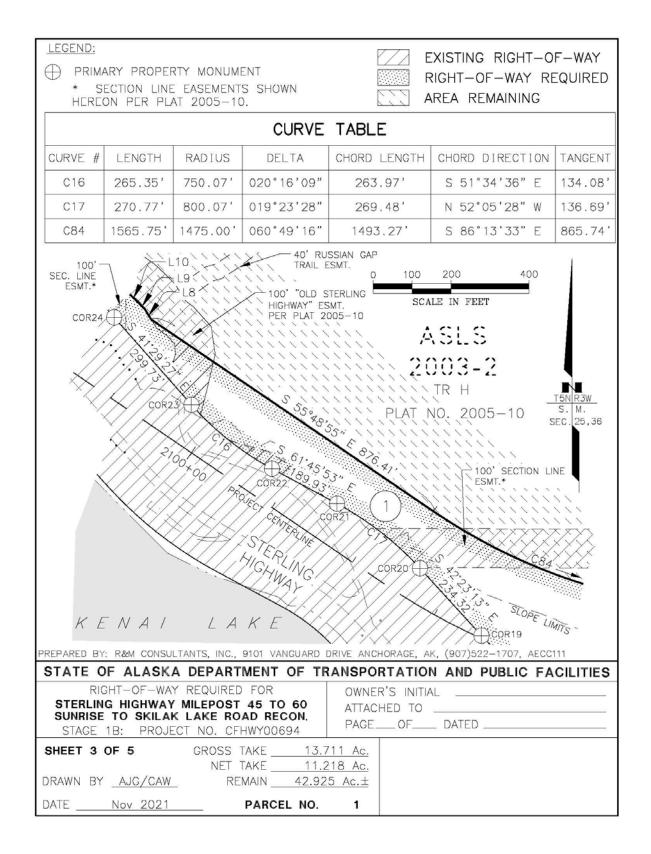
For the Commissioner

25A-R640 (Rev 09/01/06)



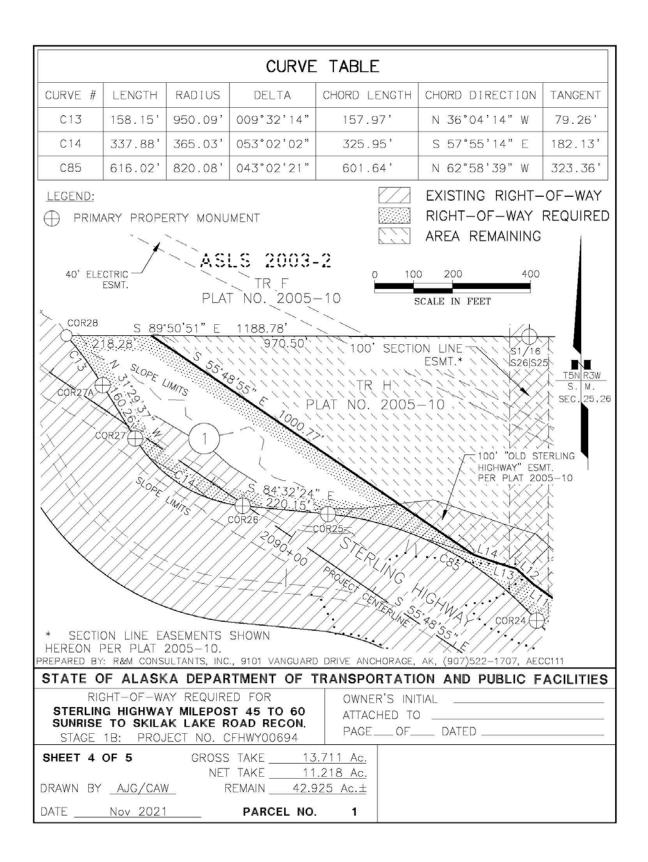
25A-R640 (Rev 09/01/06)





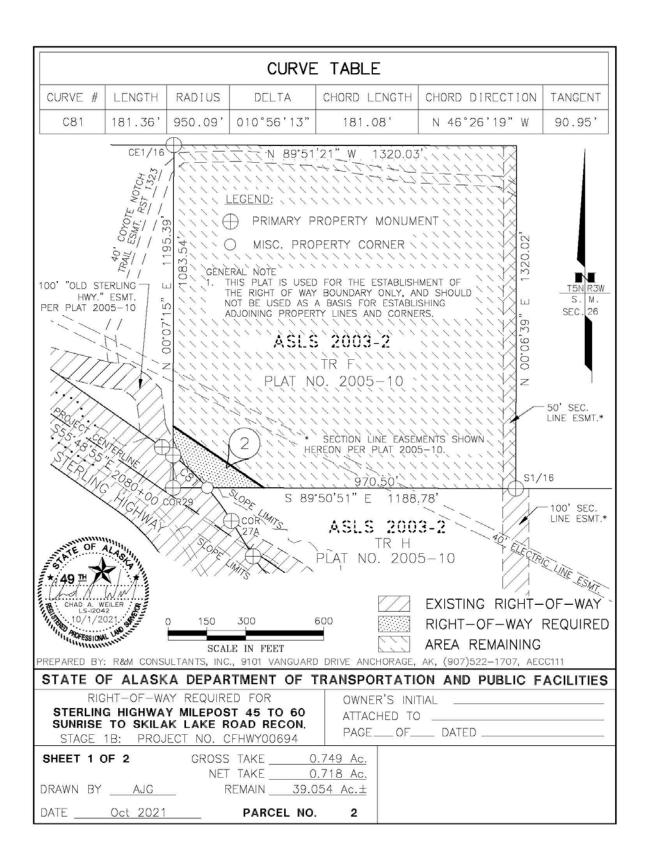
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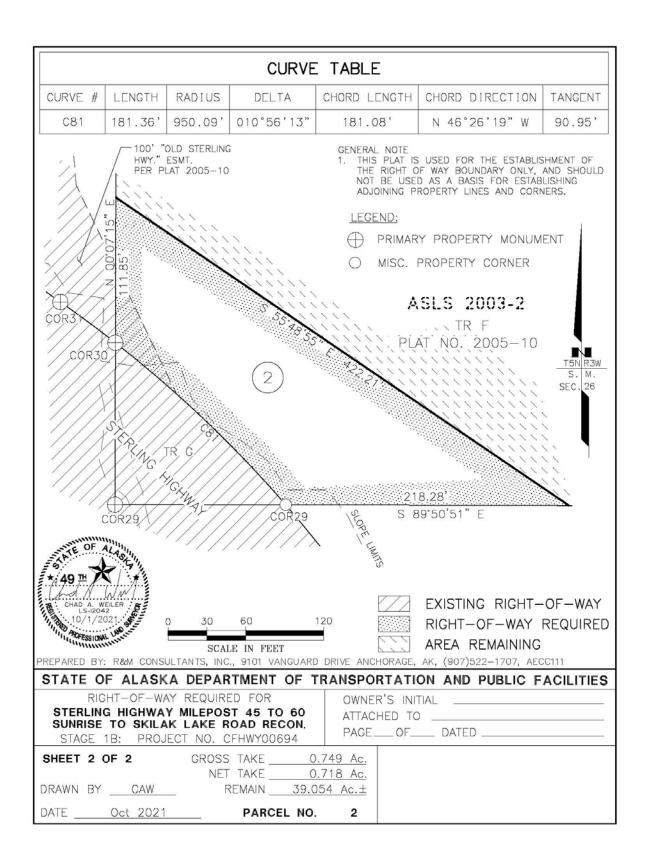
Page 6 of 21



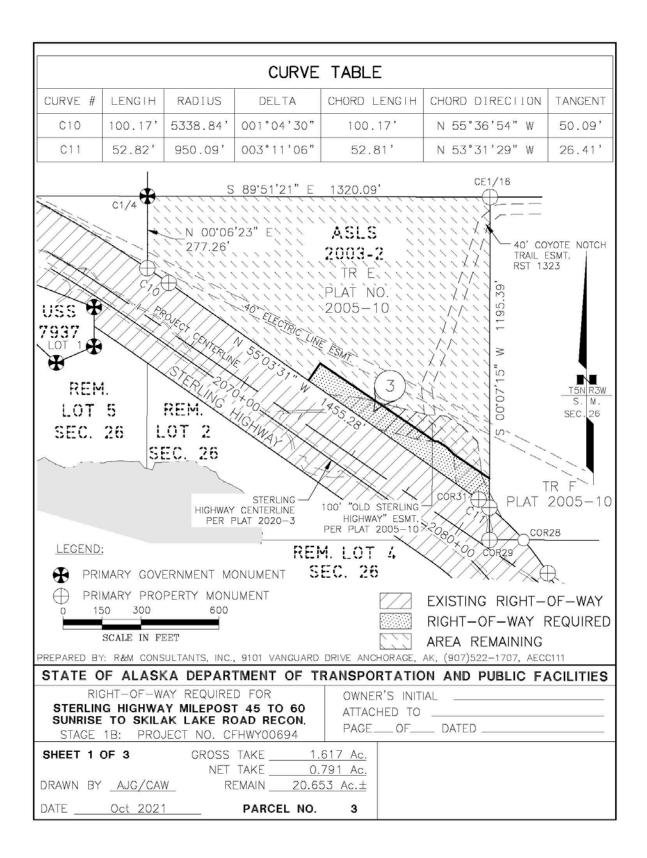
	LINE T	ABLE	
LINE #	LENGTH	DIRECTION	
L8	32.58'	S 31°52'22" E	
L9	27.00'	S 44°40'52" E	
L10	25.66'	S 46°58'17" E	
L11	61.92'	S 54°41'11" E	
L12	56.81'	S 47°34'23" E	
L13	55.48'	S 72°48'15" E	
L14	60.15'	S 70°46'44" E	
SHOULD NOT ESTABLISHING CORNERS.	BE. USED ADJOINING OF AL 49 H CHAD A. WELL 11/30/202 AL IS FOR AL D ON SHEETS	L WORK 1-5 OF 5.	AND 7)522–1707, AECC111
RIGHT-OF-WAY REQUIRED FOR			D PUBLIC FACILITIES
STERLING HIGHWAY MILEPOST 45 TO SUNRISE TO SKILAK LAKE ROAD REC STAGE 1B: PROJECT NO. CFHWY0065	60 A	TTACHED TO	ED
SHEET 5 OF 5 GROSS TAKE	11.218	Ac.	
DRAWN BY <u>CAW</u> REMAIN <u>PARCE</u>			
DATE <u>Nov 2021</u> PARCEI	L NO.	1	

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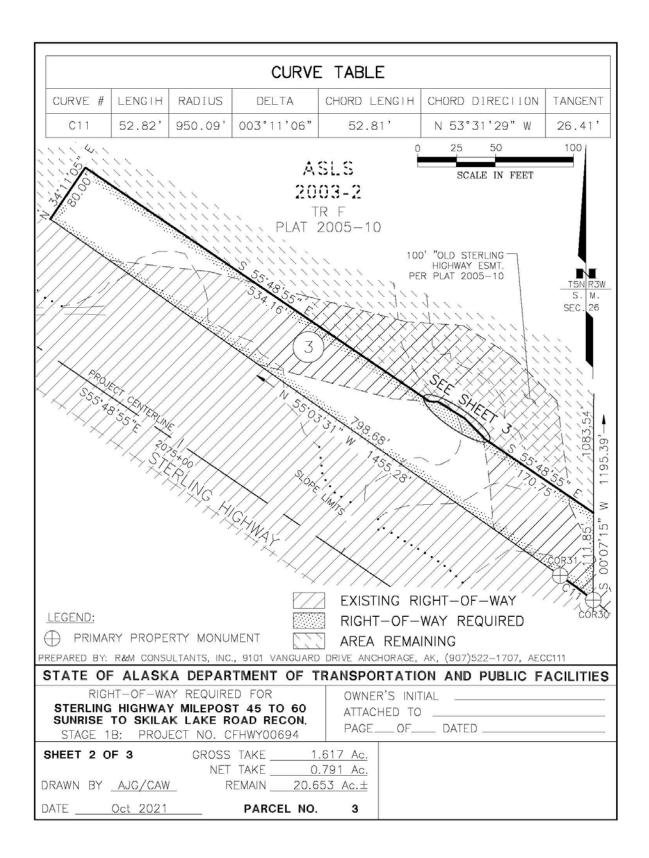




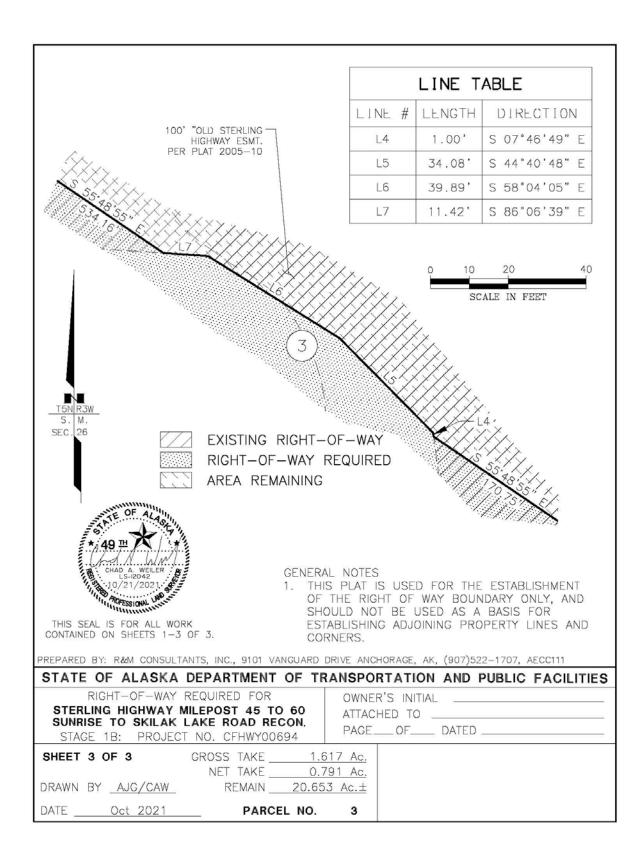
Page 10 of 21



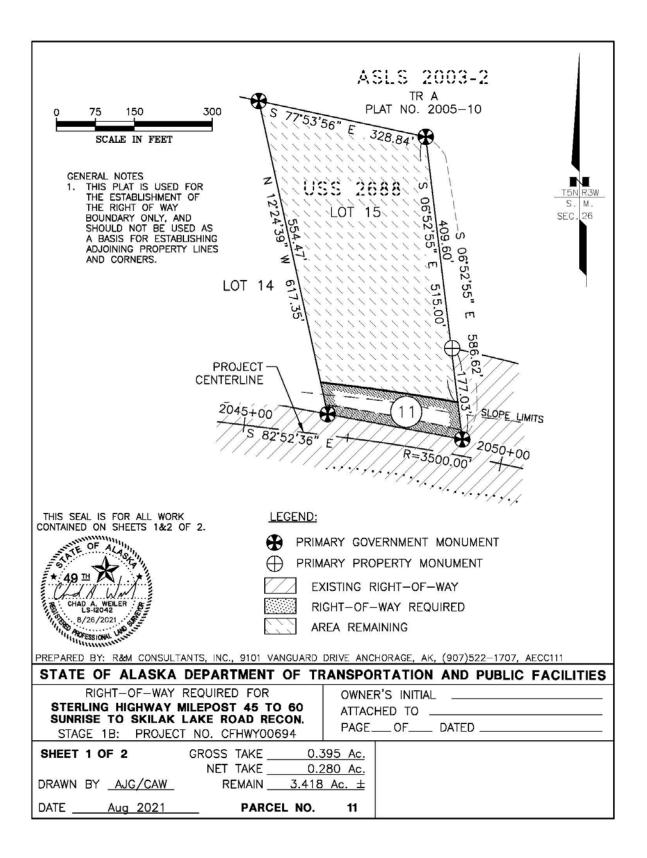
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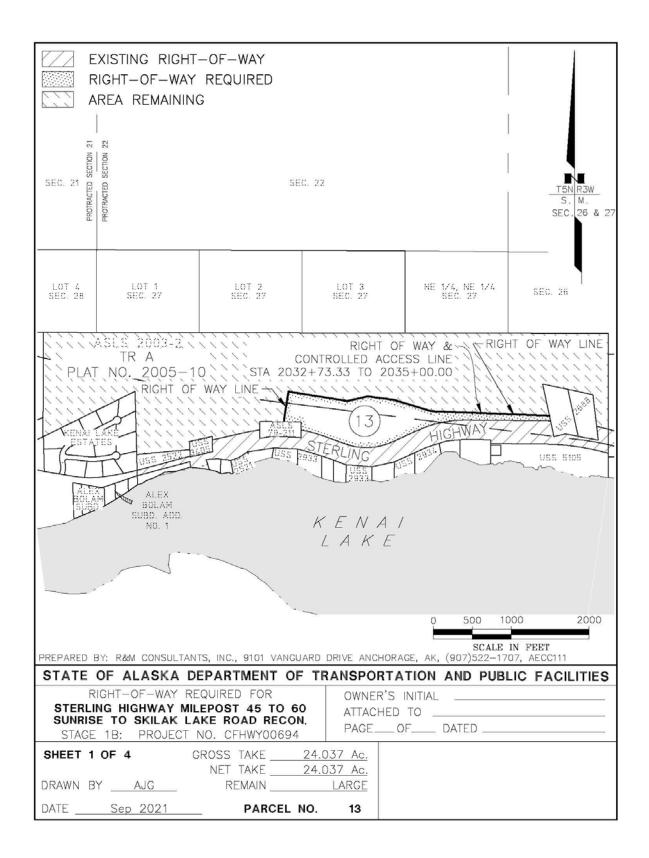


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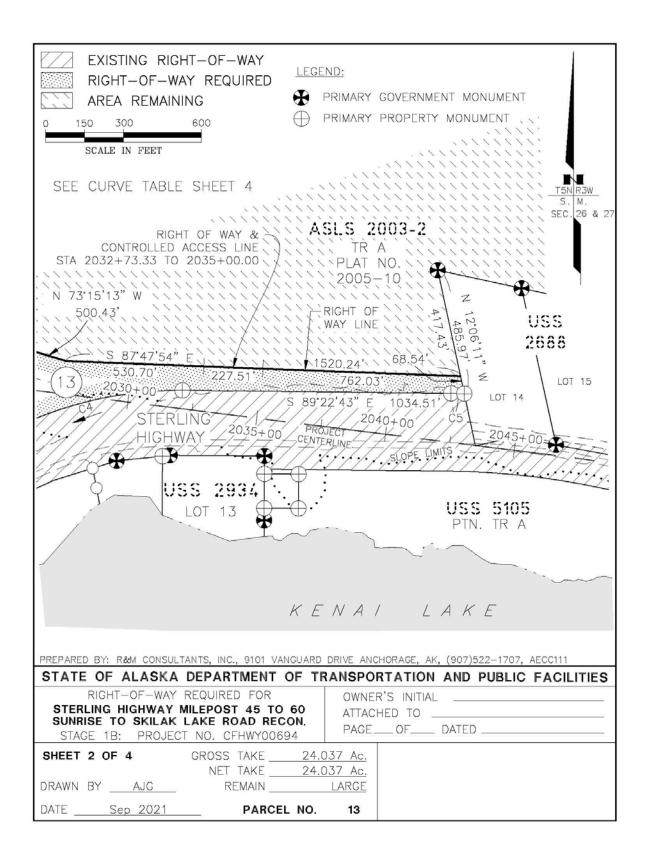


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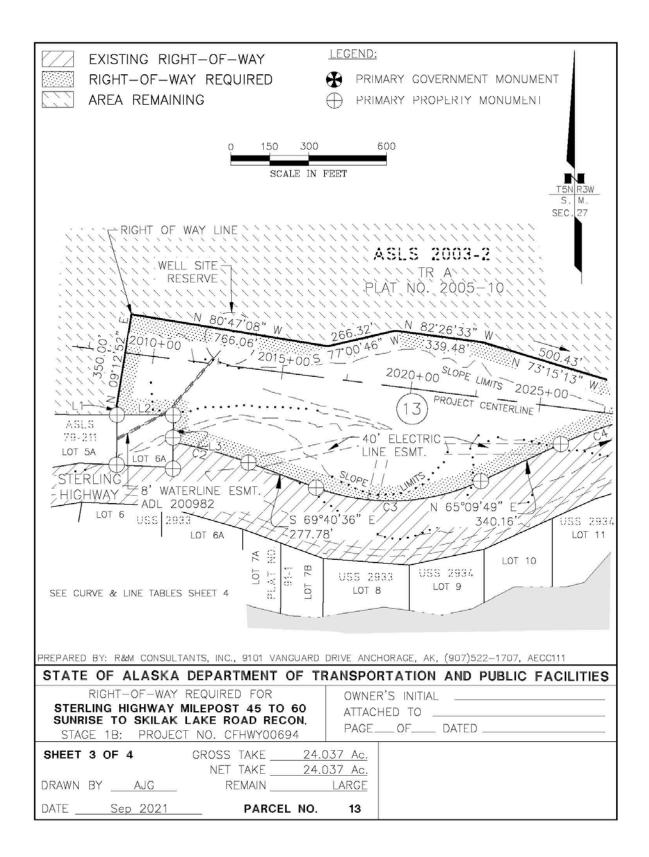
			CURVE	TABLE					
CURVE #	LENGTH	RADIUS	DELTA	CHORD LENGTH		TANGENT			
C90	202.13'	3600.00'	003°13'01"	202.10'	S 81°16'06" E	101.09'			
C91	265.52'	3100.29'	004°54'25"	265.44'	N 79°27'12" W	132.84'			
$\begin{array}{c} 0 & 25 & 50 & 100 \\ \hline & & \\ \hline \hline & & \\ \hline & & \\ \hline \\ \hline$									
	GENERAL NOTES       LEGEND:         1. THIS PLAT IS USED FOR       PRIMARY GOVERNMENT MONUMENT         THE ESTABLISHMENT OF       PRIMARY PROPERTY MONUMENT         BOUNDARY ONLY, AND       PRIMARY PROPERTY MONUMENT         SHOULD NOT BE USED AS       EXISTING RIGHT-OF-WAY         A BASIS FOR ESTABLISHING       RIGHT-OF-WAY REQUIRED         AND CORNERS.       AREA REMAINING								
PREPARED B	Y: R&M CONS	ULTANTS. INC.	. 9101 VANGUARD	DRIVE ANCHORAGE.	AK, (907)522-1707, AEC	0111			
					ON AND PUBLIC FA				
RIGHT-OF-WAY REQUIRED FOR       OWNER'S INITIAL         STERLING HIGHWAY MILEPOST 45 TO 60       ATTACHED TO         SUNRISE TO SKILAK LAKE ROAD RECON.       ATTACHED TO         STAGE 1B:       PROJECT NO. CFHWY00694         SHEET 2 OF 2       GROSS TAKE       0.395 Ac.									
		NET	TAKE 0. EMAIN 3.418	280 Ac.					



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## LINE TABLE

LINE #	LENGTH	DIRECTION
L.1	41.31'	S 00°15'01" W
L2	216.96'	S 89°46'26" E
L3	105.25'	N 00°14'04" E

# CURVE TABLE

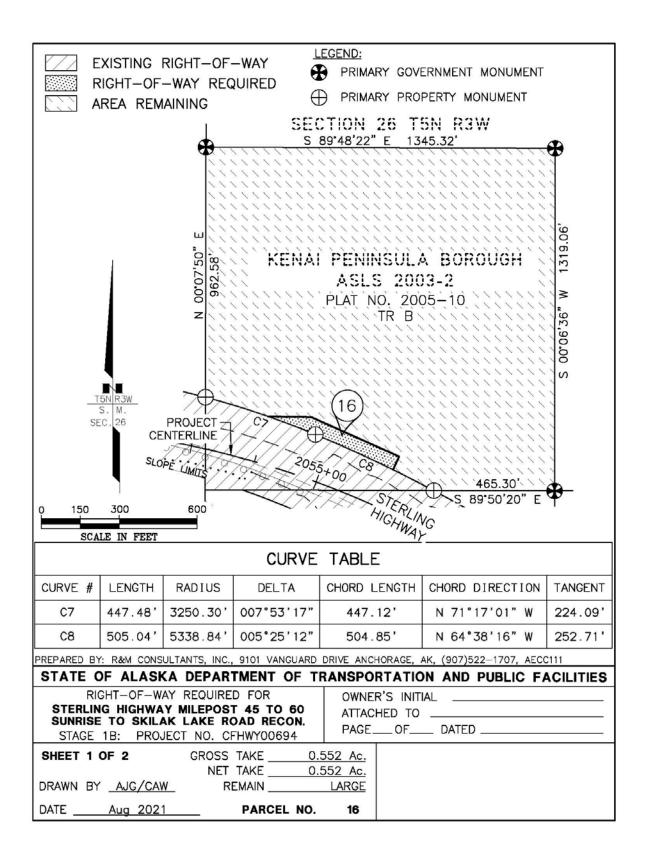
CURVE #	LENGTH	RADIUS	DELTA	CHORD LENGTH	CHORD DIRECTION	TANGENT
C2	301.09'	1632.37'	010°34'05"	300.66'	N 74°57'39" W	150.97'
C3	651.00'	825.08'	045°12'26"	634.25'	N 87°42'36" E	343.51'
C4	645.62'	1450.14'	025°30'32"	640.30'	S 77°52'41" W	328.25'
C5	50.84'	3250.30'	000°53'46"	50.84'	N 88°42'45" W	25.42'

#### GENERAL NOTES

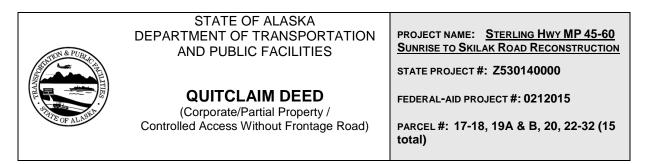
 THIS PLAT IS USED FOR THE ESTABLISHMENT OF THE RIGHT OF WAY BOUNDARY ONLY, AND SHOULD NOT BE USED AS A BASIS FOR ESTABLISHING ADJOINING PROPERTY LINES AND CORNERS.

THIS SEAL IS FOR ALL WORK CONTAINED ON SHEETS 1-4 OF 4. PREPARED BY: R&M CONSULTANTS, INC., 9101 VANGUARD DRIVE ANCHORAGE, AK, (907)522-1707, AECC111

STATE OF ALASKA DEPARTMENT OF TH	RANSPORTATION AND PUBLIC FACILITIES
RIGHT-OF-WAY REQUIRED FOR	OWNER'S INITIAL
STERLING HIGHWAY MILEPOST 45 TO 60 SUNRISE TO SKILAK LAKE ROAD RECON.	ATTACHED TO
STAGE 1B: PROJECT NO. CFHWY00694	PAGEOF DATED
SHEET 4 OF 4 GROSS TAKE	
DRAWN BY AJG REMAIN	
DATE Sep 2021 PARCEL NO.	13



	N 89'03'06" W 165.50' ASLS 2003-2 PLAT NO. 2005-10 TR B PROJECT CENTERLINE 2050+00 16 16 16 16 16 16 16 16 16 16								
			CURVE	TABLE					
CURVE #	LENGTH	RADIUS	DELTA	CHORD LENGTH	CHORD DIRECTION	TANGENT			
C7	447.48'	3250.30'	007°53'17"	447.12'	N 71°17'01" W	224.09'			
C8	505.04'	5338.84'	005°25'12"	504.85'	N 64°38'16" W	252.71'			
	EXISTING RIGHT-OF-WAY RIGHT-OF-WAY REQUIRED AREA REMAINING GENERAL NOTES 1. THIS PLAT IS USED FOR THE ESTABLISHMENT OF THE RIGHT OF WAY BOUNDARY ONLY, AND S. M.								
★ 49 H CHAD A. LS-II 8/26,	SHOULD NOT BE USED AS A BASIS FOR SHOULD NOT BE USED AS A BASIS FOR ESTABLISHING ADJOINING PROPERTY LINES AND CORNERS. SEC. 26 SEC. 26								
TILING ADED		ONTAINED ON	FOR ALL WORK SHEETS 1-2 OF						
					AK, (907)522-1707, AECO				
RIC STERLIN SUNRISE	STATE OF ALASKA DEPARTMENT OF       TRANSPORTATION AND PUBLIC FACILITIES         RIGHT-OF-WAY REQUIRED FOR       OWNER'S INITIAL         STERLING HIGHWAY MILEPOST 45 TO 60       OWNER'S INITIAL         STAGE 1B:       PROJECT NO. CFHWY00694								
SHEET 2 DRAWN BY		NET	TAKE0. TAKE0. EMAIN	552 Ac.					
DATE	~		PARCEL NO.						



The GRANTOR, **KENAI PENINSULA BOROUGH**, whose mailing address is 144 North Binkley Street, Soldotna, Alaska 99669, for and in consideration of ten dollars, and other valuable consideration, in hand paid, conveys and quitclaims to the GRANTEE, **STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES**, whose mailing address is P.O. Box 196900, Anchorage, Alaska 99519, all rights, title, and interest, if any, which it has or may hereinafter acquire in the following-described real estate located in the State of Alaska, all that part of the following-described land:

Parcel 17: A portion of :

Tract "A", Alaska State Land Survey 2003-2, according to the official plat thereof, filed under Plat Number 2005-10, records of the Seward Recording District, Third Judicial District, State of Alaska. Containing 50.130 acres, more or less.

Parcel 18: A portion of :

Tract "A", Alaska State Land Survey 2002-5, according to the official plat thereof, filed under Plat Number 2003-3, records of the Seward Recording District, Third Judicial District, State of Alaska. Containing 9.177 acres, more or less.

### Parcel 19A&B: A portion of :

Tract "J", Birch and Grouse Ridge Subdivision, according to the official plat thereof, filed under Plat Number 2004-14, records of the Seward Recording District, Third Judicial District, State of Alaska. Containing 15.714 acres, more or less.

Parcel 20: A portion of :

Government Lots 1,2,3 & 4, Section 28, Township 5 North, Range 3 West, records of the Seward Recording District, Third Judicial District, State of Alaska. Containing 36.149 acres, more or less.

Parcel 22: A portion of :

Tract "F", Birch and Grouse Ridge Subdivision, according to the official plat thereof, filed under Plat Number 2004-14, records of the Seward Recording District, Third Judicial District, State of Alaska. Containing 1.378 acres, more or less.

#### Parcel 23: A portion of :

Lot 8, Birch and Grouse Ridge Subdivision, according to the official plat thereof, filed under Plat Number 2004-14, records of the Seward Recording District, Third Judicial District, State of Alaska. Containing 0.525 acres, more or less.

#### Parcel 24: A portion of :

Lot 7, Birch and Grouse Ridge Subdivision, according to the official plat thereof, filed under Plat Number 2004-14, records of the Seward Recording District, Third Judicial District, State of Alaska. Containing 1.103 acres, more or less.

#### Parcel 25: A portion of :

Lot 6, Birch and Grouse Ridge Subdivision, according to the official plat thereof, filed under Plat Number 2004-14, records of the Seward Recording District, Third Judicial District, State of Alaska. Containing 1.631 acres, more or less.

#### Parcel 26: A portion of :

Lot 5, Birch and Grouse Ridge Subdivision, according to the official plat thereof, filed under Plat Number 2004-14, records of the Seward Recording District, Third Judicial District, State of Alaska. Containing 1.667 acres, more or less.

#### Parcel 27: A portion of :

Lot 4, Birch and Grouse Ridge Subdivision, according to the official plat thereof, filed under Plat Number 2004-14, records of the Seward Recording District, Third Judicial District, State of Alaska. Containing 2.259 acres, more or less.

#### Parcel 28: A portion of :

Lot 3, Birch and Grouse Ridge Subdivision, according to the official plat thereof, filed under Plat Number 2004-14, records of the Seward Recording District, Third Judicial District, State of Alaska. Containing 2.325 acres, more or less.

### Parcel 29: A portion of :

Lot 2, Birch and Grouse Ridge Subdivision, according to the official plat thereof, filed under Plat Number 2004-14, records of the Seward Recording District, Third Judicial District, State of Alaska. Containing 0.406 acres, more or less.

#### Parcel 30: A portion of :

Tract "B", Birch and Grouse Ridge Subdivision, according to the official plat thereof, filed under Plat Number 2004-14, records of the Seward Recording District, Third Judicial District, State of Alaska. Containing 8.192 acres, more or less.

## Parcel 31: A portion of :

Tract "A", Birch and Grouse Ridge Subdivision, according to the official plat thereof, filed under Plat Number 2004-14, records of the Seward Recording District, Third Judicial District, State of Alaska. Containing 8.265 acres, more or less.

#### Parcel 32: A portion of :

Tract "A" of US Survey No. 5105, records of the Seward Recording District, Third Judicial District, State of Alaska. Containing 4.264 acres, more or less.

which lies within the right-of-way lines of Alaska Project No. Z530140000 delineated as to said tracts of land on the plats attached hereto and made a part hereof of this instrument and designated as Parcels 17-18, 19A & B, 20 and 22-32. Said parcels, containing 143.185 acres, more or less, in addition to existing right-of-way, is hereby conveyed to the State Of Alaska, Department Of Transportation And Public Facilities.

This property is acquired to enable the State of Alaska to construct and maintain a public highway for the Alaska Project identified above, commonly referred to as the Cooper Landing Bypass, as a controlled access facility in accordance with AS 19.20.020 – AS 19.20.070. Included in the acquisition of the above-described property is a fee simple interest together with all easements or any rights of ingress or egress to, from, or across the controlled access facility, to or from the remaining property of which the above-described property was a part.

Dated this\_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_.

ATTEST:

Kenai Peninsula Borough:

By: \_\_\_\_\_

Filed for Record at the Request of and Return to: DOT&PF ROW Engineering P.O. Box 196900 Anchorage, AK 99519-6900

State Business-No Charge

## CORPORATE ACKNOWLEDGMENT

STATE OF ALASKA	)
	: \$\$
3 <sup>RD</sup> JUDICIAL DISTRICT	)

On this \_\_\_\_\_ day of \_\_\_\_\_\_, 2\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared \_\_\_\_\_\_ for the Kenai Peninsula Borough, known to me to be the identical individual who executed the foregoing instrument, and who acknowledged to me that they executed the same freely and voluntarily, with full authority to do so and with full knowledge of its contents, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Notary Public in and for the State of Alaska My Commission Expires: \_\_\_\_\_

## **CERTIFICATE OF ACCEPTANCE**

THIS IS TO CERTIFY that the STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, Grantee herein, acting by and through its Commissioner, hereby accepts for public purposes the real property, or interest therein, described in this instrument and consents to the recordation thereof.

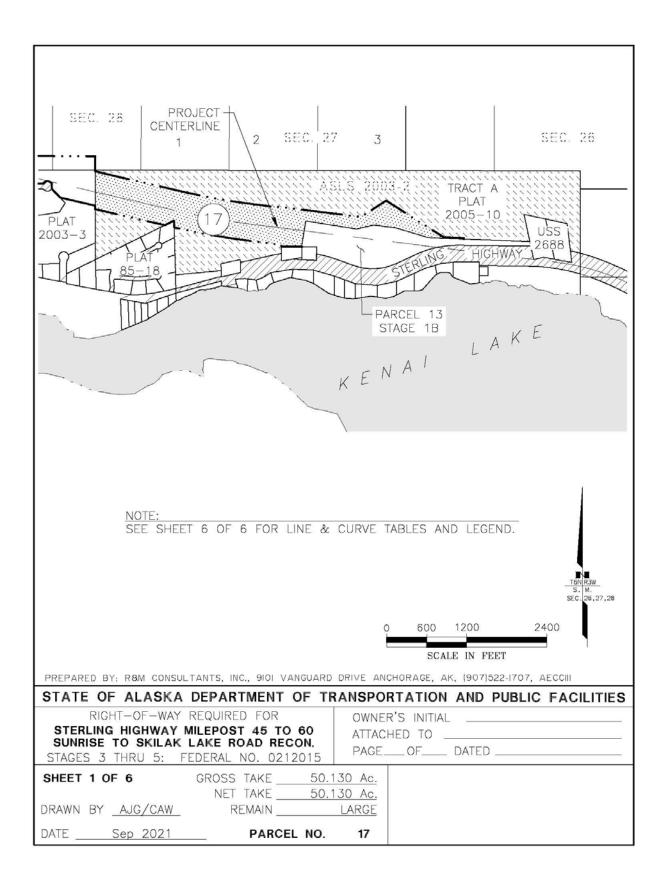
IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day of \_\_\_\_\_,

2\_\_\_\_.

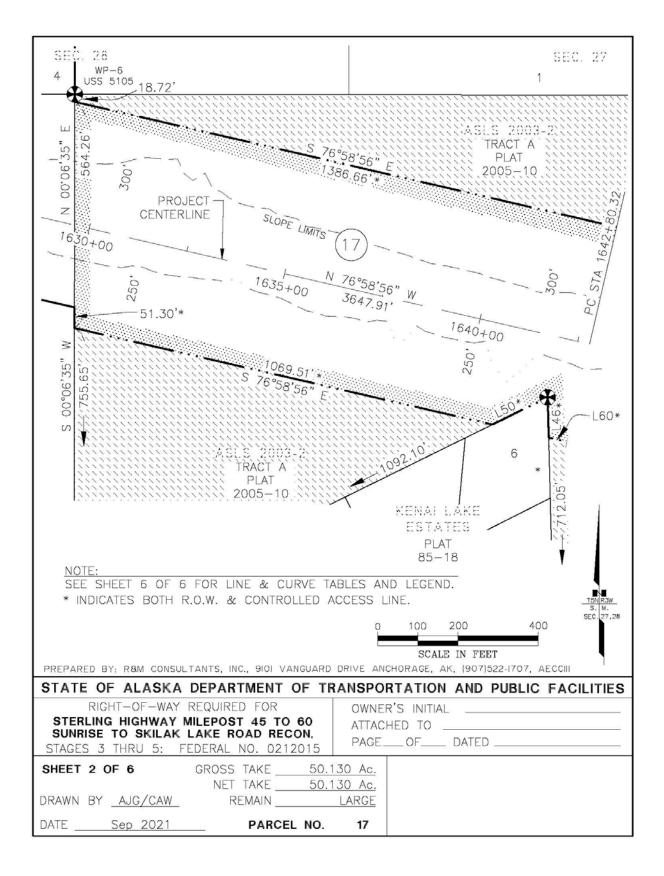
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

By: \_\_\_\_

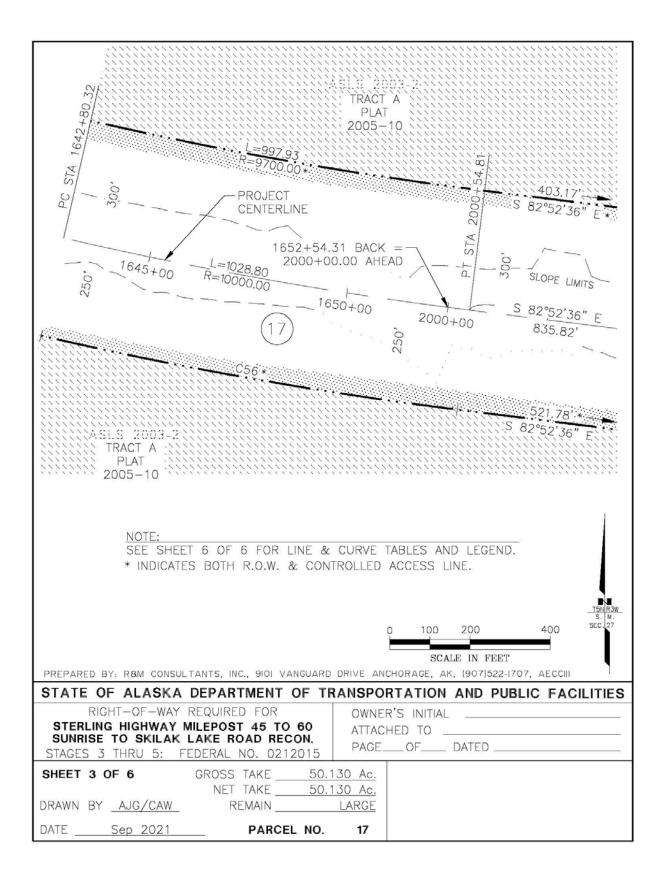
For the Commissioner



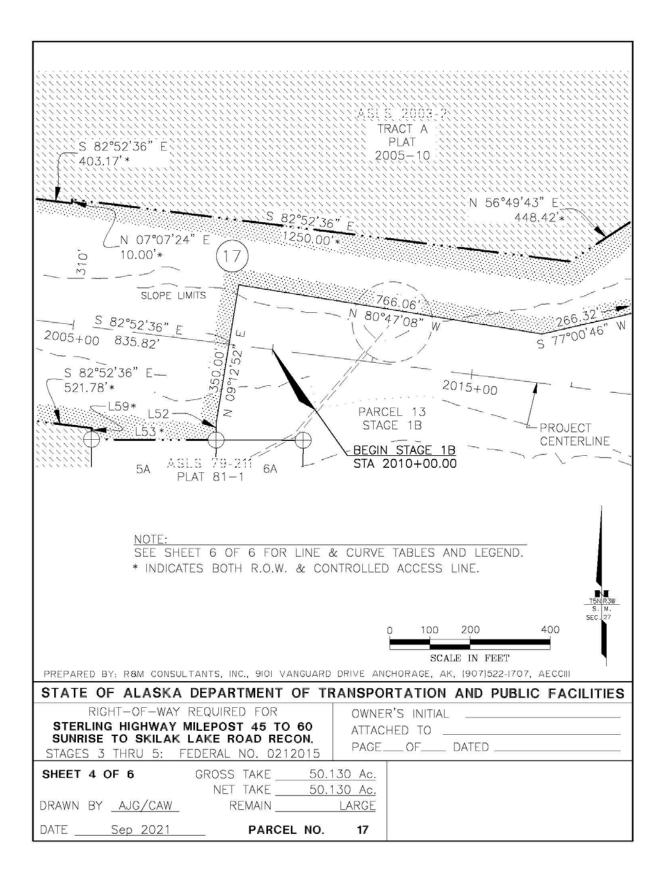
Page 5 of 49



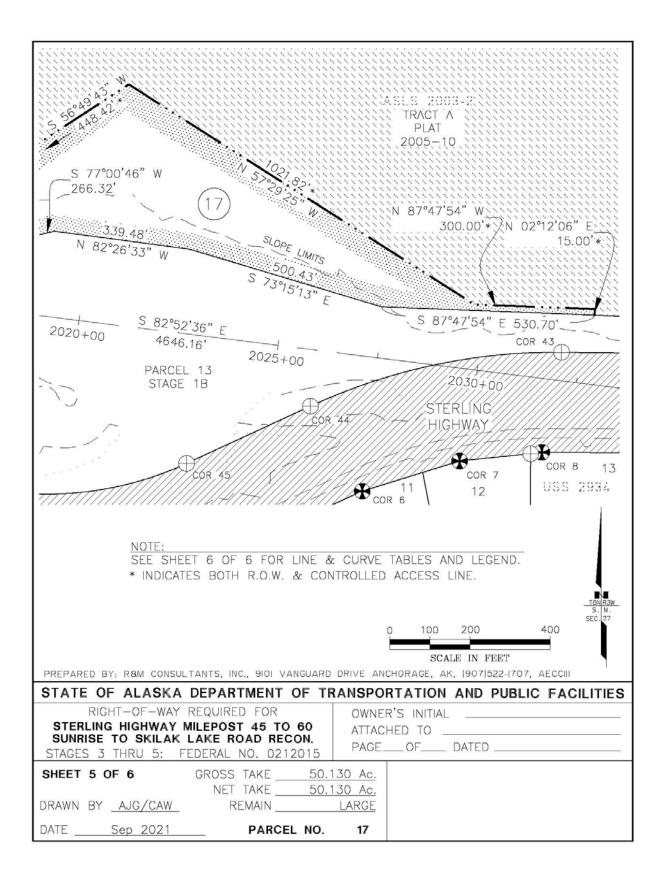
Page 6 of 49



Page 7 of 49



Page 8 of 49



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LINE TABLE								
LINE #	LENGTH	DIRECTION						
L46	100.50'	S 01°29'10" E						
L50	153.71'	N 63°44'45" E						
L52	41.31'	S 00°15'01" W						
L53	310.50'	S 89°45'24" E						
L59	28.38'	N 00°13'39" E						
L60	46.94'	S 76°58'56" E						

			CURVE	TABLE		
CURVE #	LENGTH	RADIUS	DELTA	CHORD LENGTH	CHORD DIRECTION	TANGENT
C56	1054.52'	10250.00'	005°53'40"	1054.05'	S 79°55'46" E	527.72'

GENERAL NOTE: THIS PLAT IS USED FOR THE ESTABLISHMENT OF THE RIGHT OF WAY BOUNDARY ONLY, AND SHOULD NOT BE USED AS A BASIS FOR ESTABLISHING ADJOINING PROPERTY LINES AND CORNERS.

LEGEND:

- $\mathbf{P}$ PRIMARY GOVERNMENT MONUMENT
- $\oplus$ PRIMARY PROPERTY MONUMENT
- . . . . CONTROLLED ACCESS & RIGHT OF WAY LINE
- RIGHT OF WAY LINE
- EXISTING RIGHT-OF-WAY
  - RIGHT-OF-WAY REQUIRED
  - AREA REMAINING

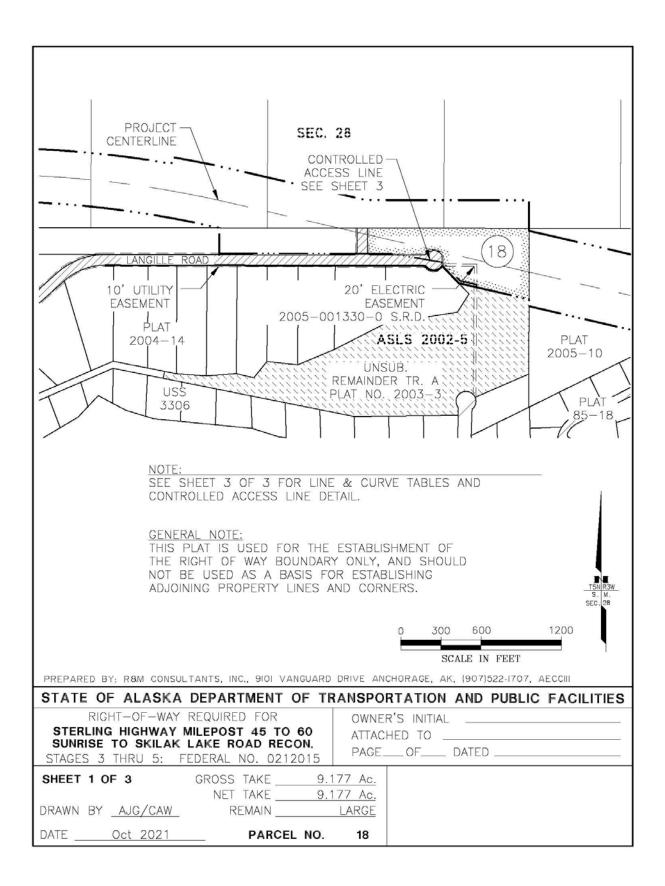
#### 0ee humm THIS SEAL IS FOR ALL WORK CONTAINED ON SHEETS 1-6 OF 6.

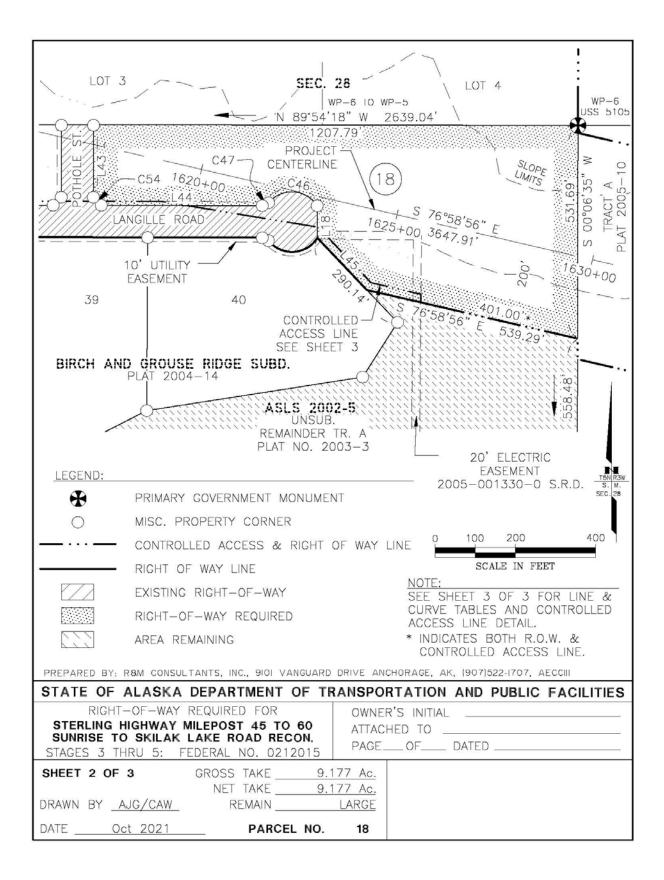
OF

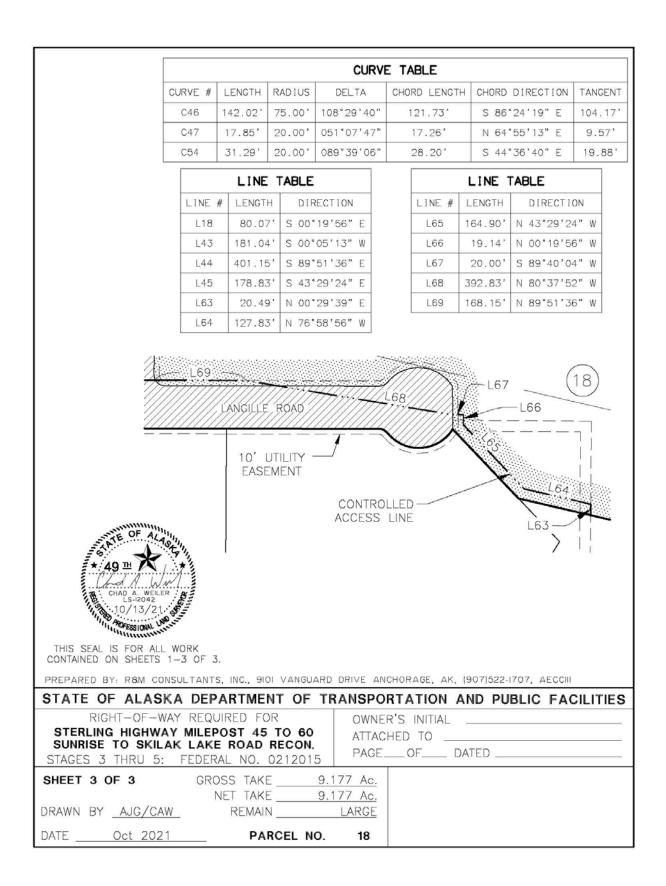
O TH

PREPARED BY: R&M CONSULTANTS, INC., 9101 VANGUARD DRIVE ANCHORAGE, AK, 1907)522-1707, AECCIII

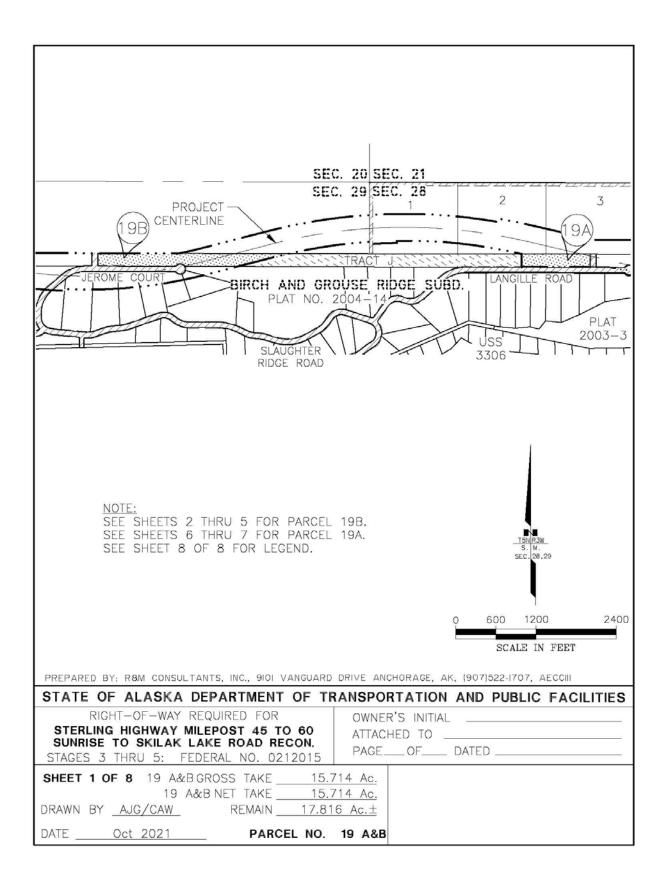
STATE OF ALASKA DEPARTMENT OF T	RANSPORTATION AND PUBLIC FACILITIES
RIGHT-OF-WAY REQUIRED FOR STERLING HIGHWAY MILEPOST 45 TO 60 SUNRISE TO SKILAK LAKE ROAD RECON, STAGES 3 THRU 5: FEDERAL NO. 0212015	OWNER'S INITIAL ATTACHED TO PAGEOF DATED
SHEET 6 OF 6         GROSS TAKE         50.           NET TAKE         50.	130 Ac.
DRAWN BY <u>AJG/CAW</u> REMAIN	
DATE <u>Sep 2021</u> PARCEL NO.	17

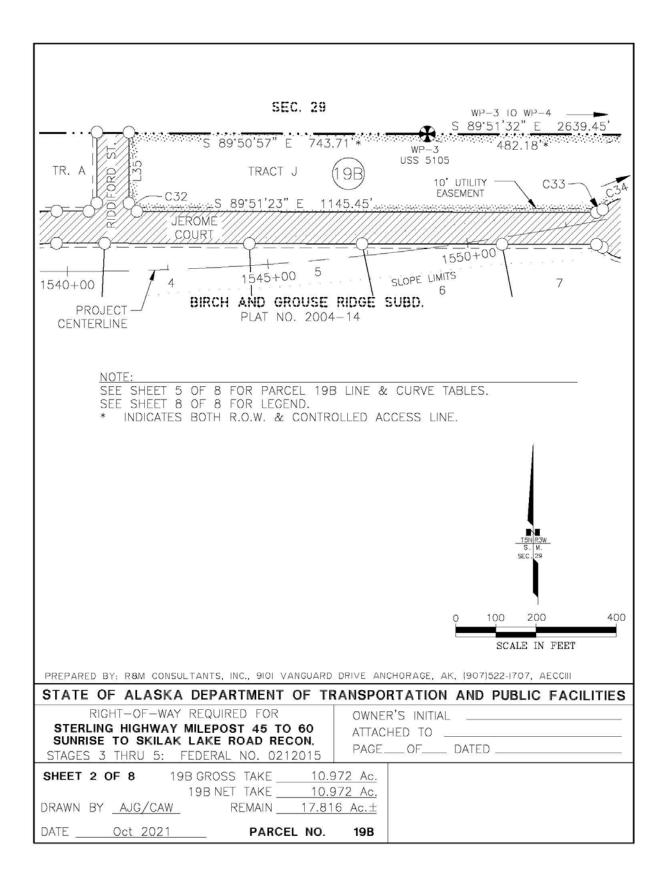


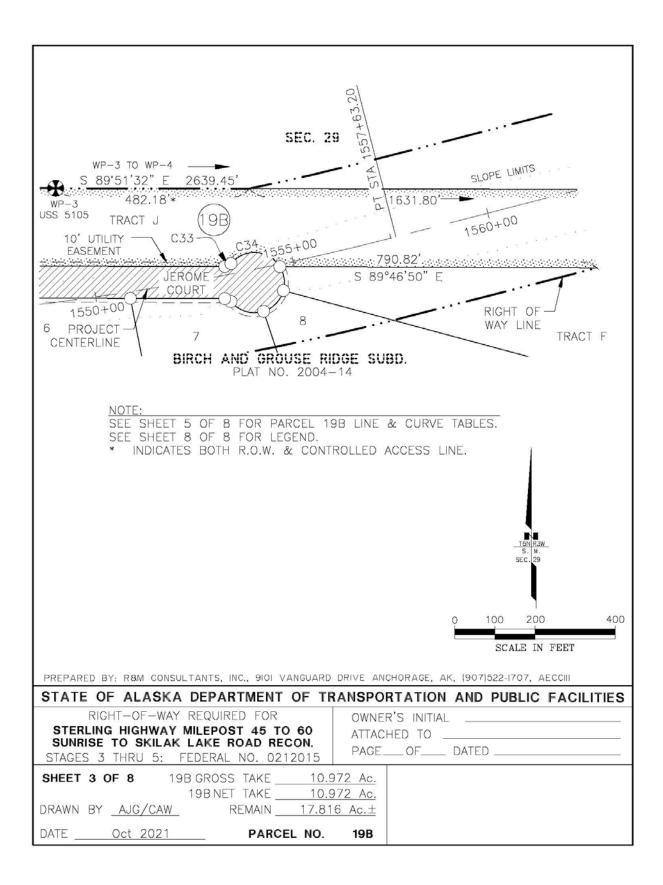




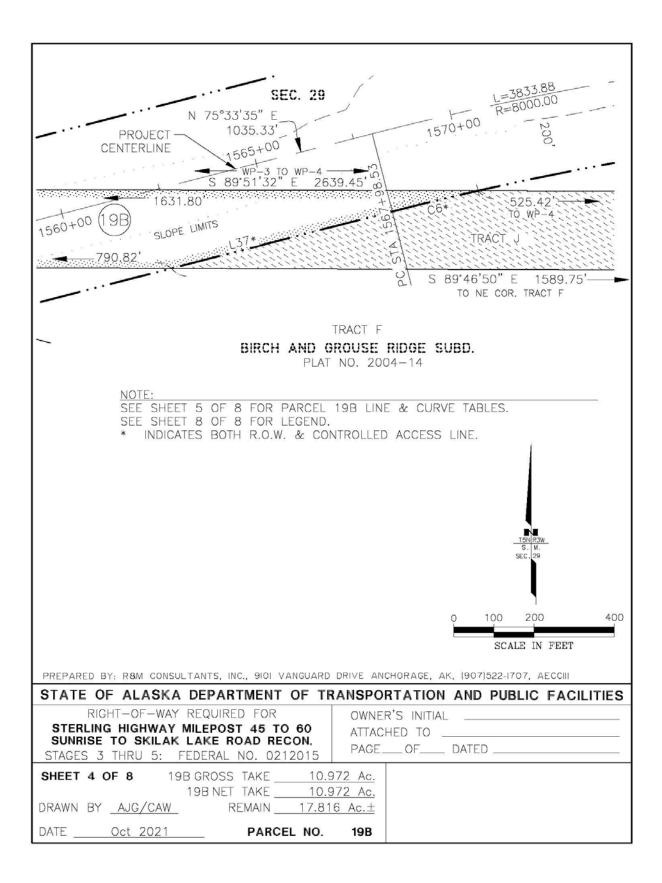
Page 13 of 49







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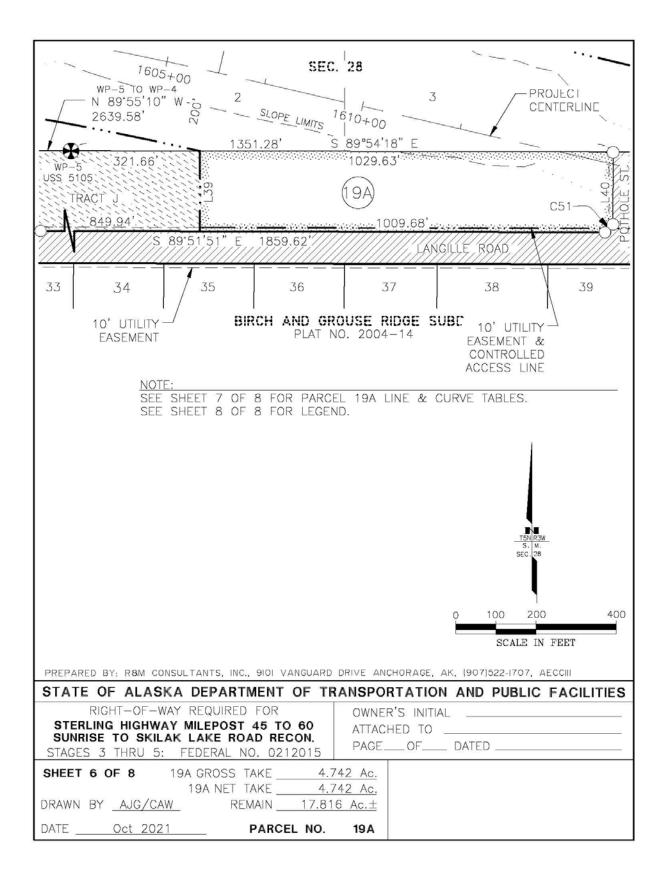
## LINE & CURVE TABLES PARCEL 19B

LINE TABLE							
LINE # LENGTH DIRECTION							
L35	174.39'	S 00°04'59" W					
L37	568.64'	N 75°33'35" E					

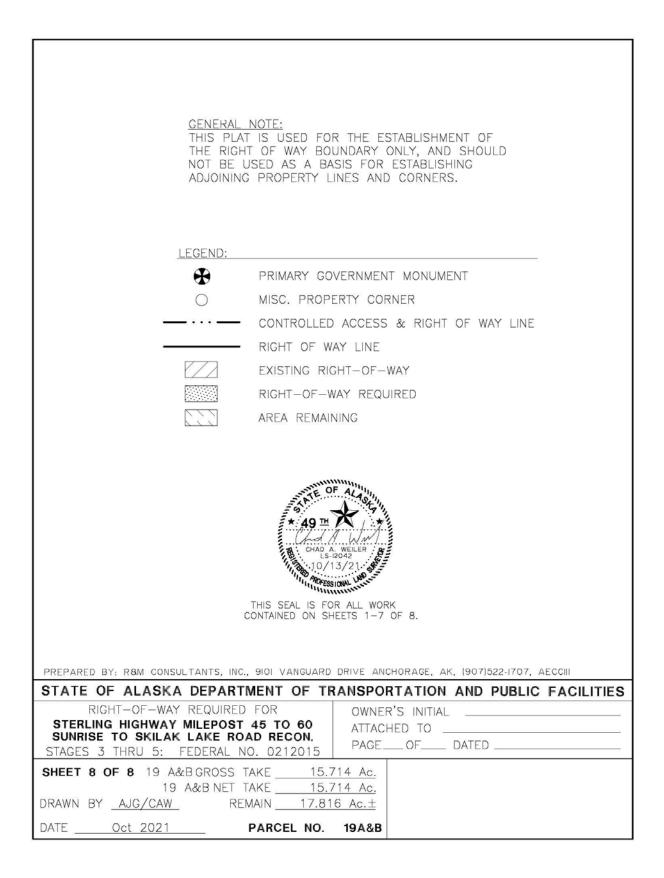
	CURVE TABLE							
CURVE #	LENGTH	RADIUS	DELTA	CHORD LENGTH	CHORD DIRECTION	TANGENT		
C32	31.50'	20.00'	090°13'52"	28.34'	S 44°43'28" E	20.08'		
C33	17.70'	20.00'	050°42'33"	17.13'	N 64°41'40" E	9,48'		
C34	142.50'	75.00'	108°51'55"	122.01'	N 86°22'10" W	104.89'		
C66	220.05'	7800.00'	001°36'59"	220.05'	N 76°22'04" E	110.03'		

PREPARED BY: R8M CONSULTANTS, INC., 9101 VANGUARD DRIVE ANCHORAGE, AK, 1907)522-1707, AECCIII

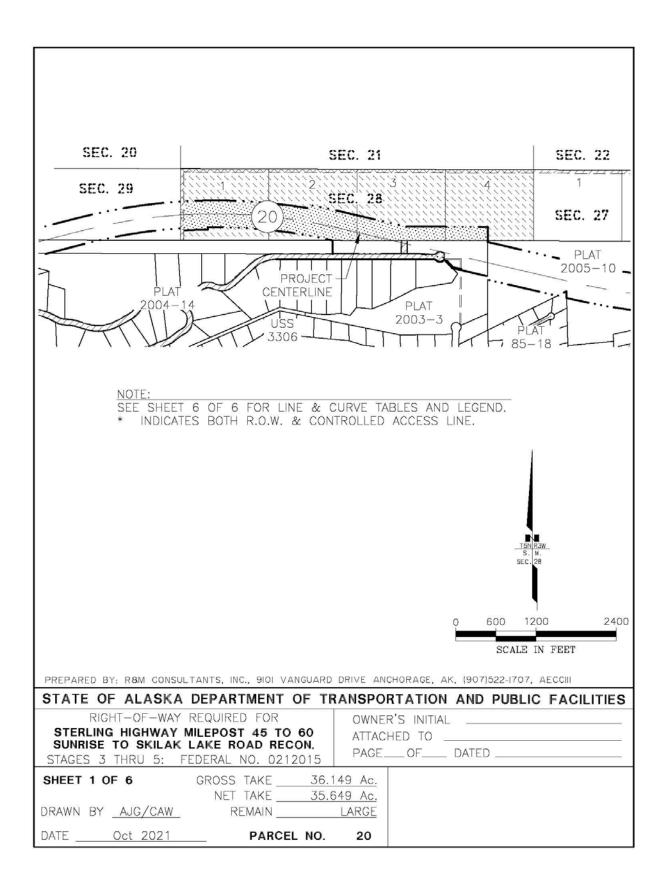
STATE OF ALASKA DEPARTMENT OF TH	RANSPORTATION AND PUBLIC FACILITIES
RIGHT-OF-WAY REQUIRED FOR STERLING HIGHWAY MILEPOST 45 TO 60 SUNRISE TO SKILAK LAKE ROAD RECON. STAGES 3 THRU 5: FEDERAL NO. 0212015	OWNER'S INITIAL ATTACHED TO PAGEOF DATED
SHEET 5 OF 8         19B GROSS TAKE         10.9           19B NET TAKE         10.9           DRAWN BY         AJG/CAW         REMAIN         17.81           DATE         Oct 2021         PARCEL NO.	972 Ac.



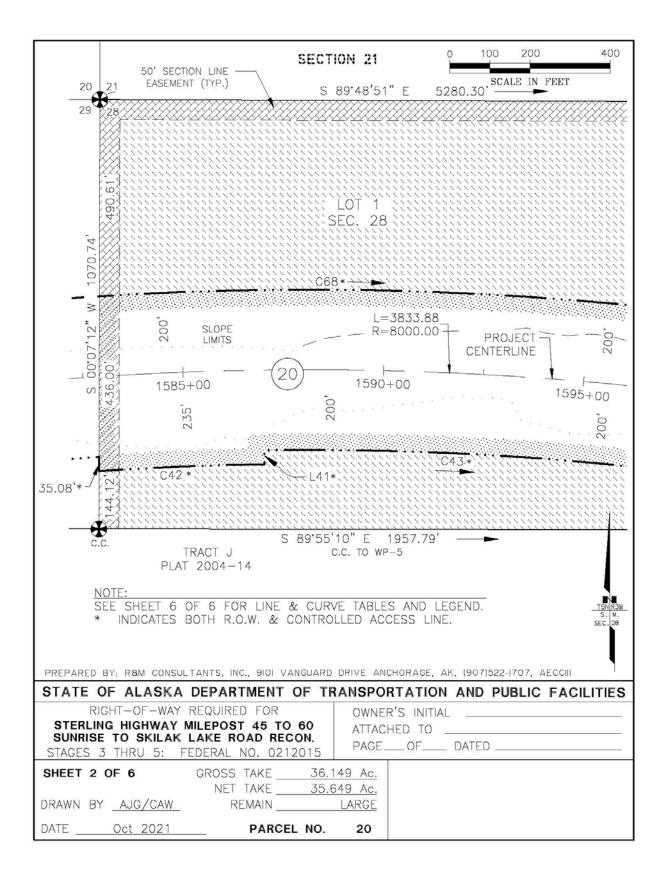
LINE AND CURVE TABLES										
PARCEL 19A										
	LINE TABLE									
					IGTH DIRECTI	ON				
			-	5	.33' S 00°08'0	<u>v</u> <u>v</u>				
				L40 180	.96' N 00°07'5	57" E				
CURVE TABLE										
	CURVE #	LENGTH	RADIUS	DELTA	CHORD LENGTH	CHORD DIRECTION	TANGENT			
	C51	31.48'	20.00'	090°11'03"	28.33'	N 44°55'28" E	20.06'			
		_								
PREPARED	BY- R8M (	CONSULTA	NTS INC.	9101 VANGU	RD DRIVE ANCHO	RAGE, AK, (907)522	-1707 AFCC	.111		
and the approximately										
STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES         RIGHT-OF-WAY REQUIRED FOR       OWNER'S INITIAL         STERLING HIGHWAY MILEPOST 45 TO 60       OWNER'S INITIAL         SUNRISE TO SKILAK LAKE ROAD RECON.       ATTACHED TO         STAGES 3 THRU 5: FEDERAL NO. 0212015       PAGE_OF_ DATED										
		19	A NET T		4.742 Ac.					
				MAIN17						
DATE	Uct 20	121	_	PARCEL NO	D. 19A					



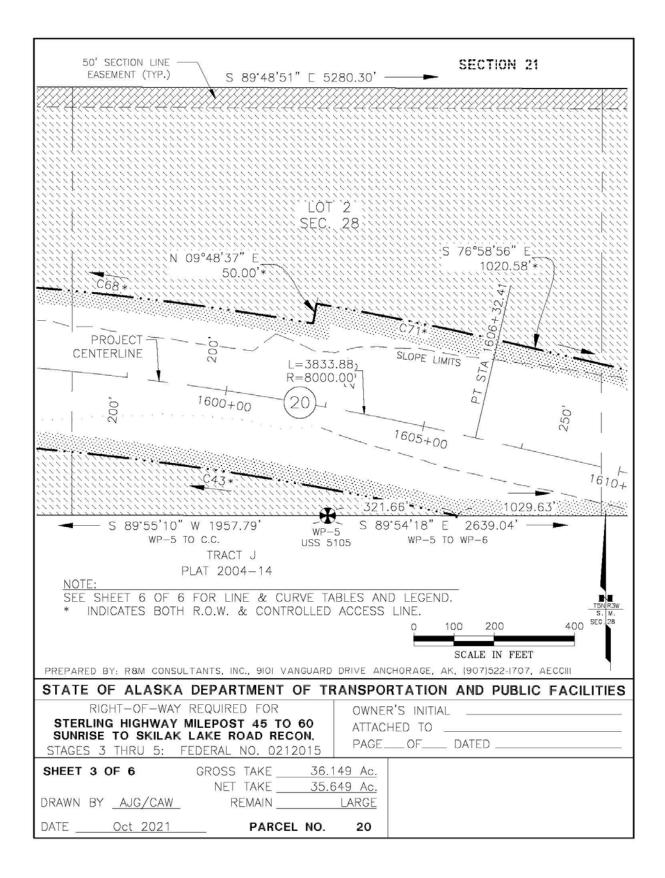
Page 21 of 49

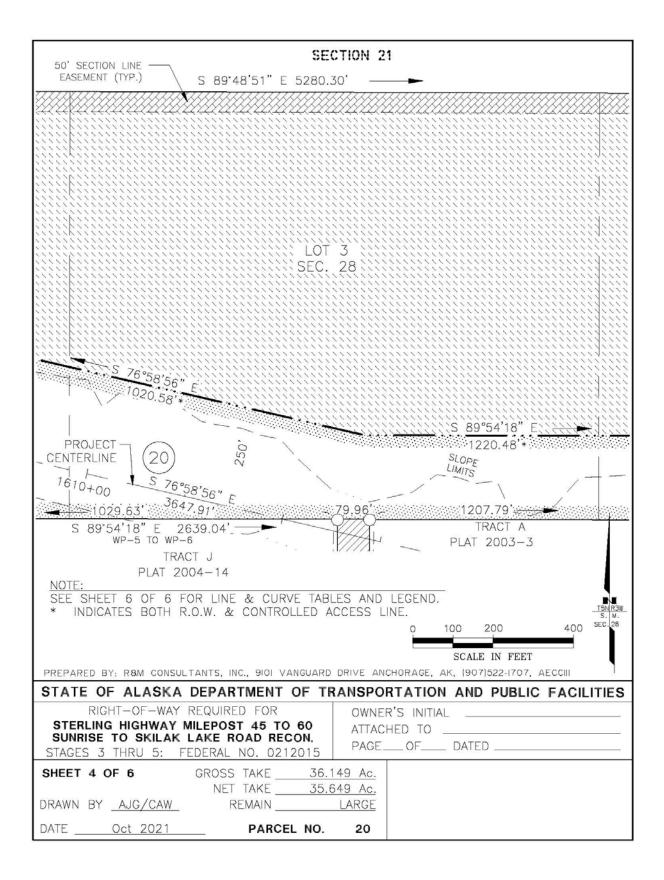


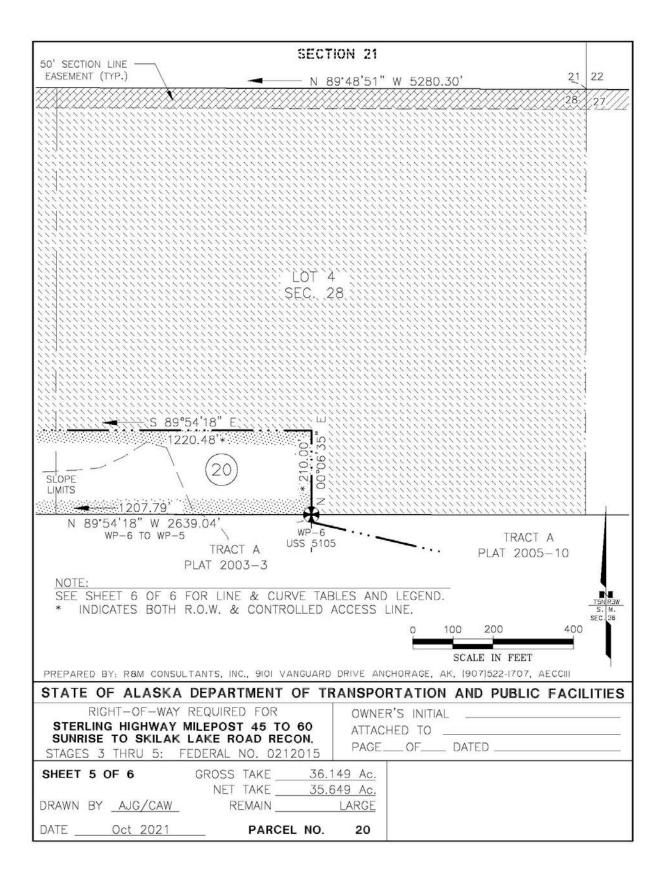
Page 22 of 49



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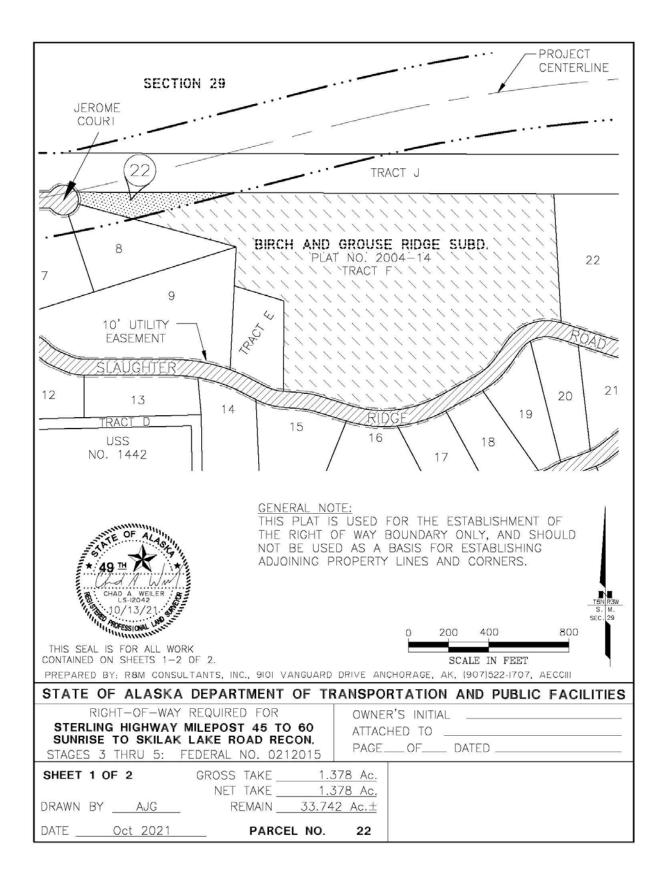




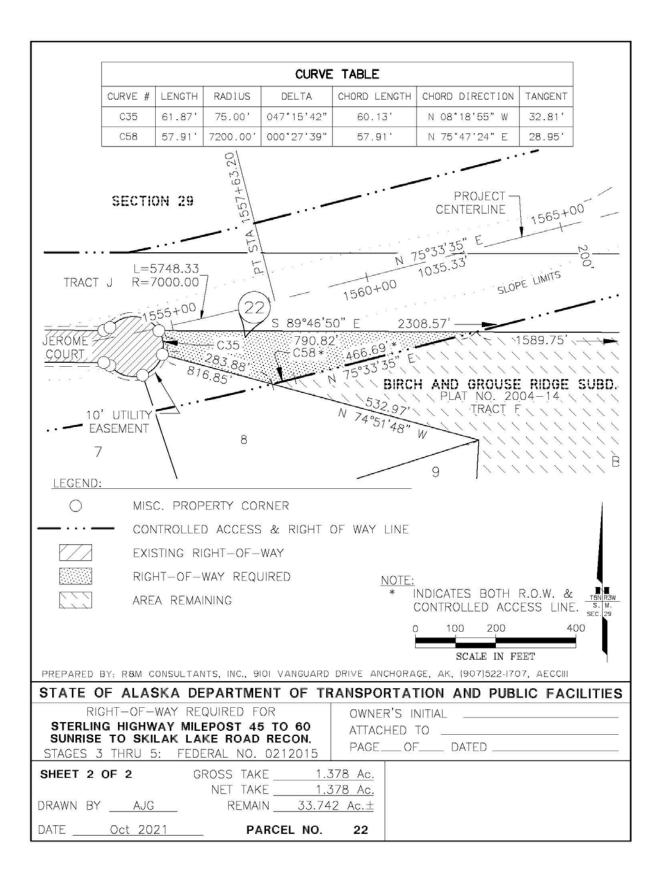
Page 26 of 49

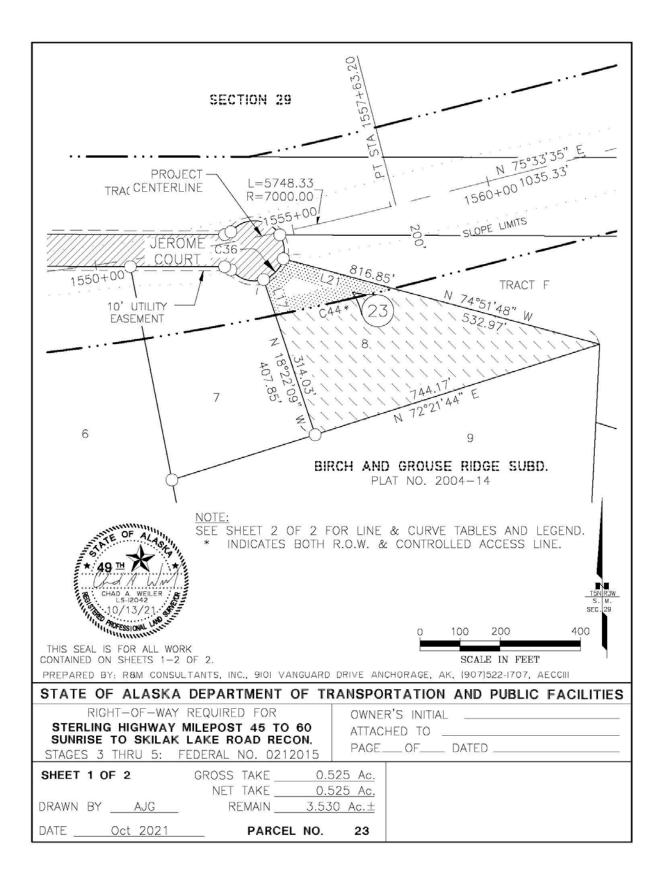
				LINE	TABLE	7	
			LIN	E # LENGTH	DIRECTION	-	
			L4	1 35.00'	N 00°49'19" W	6	
				CURVE	TABLE		
	CURVE #	LENGTH	RADIUS	DELTA	CHORD LENGTH	CHORD DIRECTION	TANGENT
	C42	412.73'	7765.00'	003°02'43"	412.68'	N 87°39'19" E	206.41'
	C43	1882.48'	7800.00'	013°49'41"	1877.91'	N 83°54'29" W	945.83'
	C68	1927.60'	8200.00'	013°28'07"	1923.17'	S 86°55'16" E	968.26'
	C71	461.45'	8250.00'	003°12'17"	461.39'	S 78°35'04" E	230.78'
TH TH NO	LEGEND: <ul> <li>PRIMARY GOVERNMENT MONUMENT</li> <li>PRIMARY PROPERTY MONUMENT</li> <li>MISC. PROPERTY CORNER</li> <li>CONTROLLED ACCESS &amp; RIGHT OF WAY LINE</li> <li>RIGHT OF WAY LINE</li> <li>EXISTING RIGHT-OF-WAY</li> <li>RIGHT-OF-WAY REQUIRED</li> <li>AREA REMAINING</li> </ul> <li> <ul> <li>GENERAL NOTE:</li> <li>THIS PLAT IS USED FOR THE ESTABLISHMENT OF THE RIGHT OF WAY BOUNDARY ONLY, AND SHOULD NOT BE USED AS A BASIS FOR ESTABLISHING ADJOINING PROPERTY LINES AND CORNERS.</li> </ul> </li>						
						CONTAINED ON SH	LETO THOUGH D.
20072 20000003	210 52		6 K			GE, AK, (907)522-170	
							LIC FACILITIES
STERL	NG HIGH	WAY MILI	QUIRED FO EPOST 45 Ke Road Eral No.	TO 60 RECON.	ATTACHED	NITIAL To Dated	
SHEET 6	OF 6		NET TAK	E 36.1 E 35.6	49 Ac.		
DRAWN E	Y AJG/	CAW		Ν			
DATE	Oct 20	021	PA	RCEL NO.	20		

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LINE TABLE				
LINE #	LENGTH	DIRECTION		
L17	93.82'	N 18°22'09" W		
L21	283.88'	N 74°51'48" W		

CURVE TABLE						
CURVE #	LENGTH	RADIUS	DELTA	CHORD LENGTH	CHORD DIRECTION	TANGENT
C36	74.39'	75.00'	056°49'45"	71.38'	N 43°34'43" E	40.58'
C44	301.16'	7200.00'	002°23'47"	301.13'	N 77°13'08" E	150.60'



O MISC. PROPERTY CORNER

···· --- CONTROLLED ACCESS & RIGHT OF WAY LINE

EXISTING RIGHT-OF-WAY

RIGHT-OF-WAY REQUIRED

AREA REMAINING

Chd A Wint

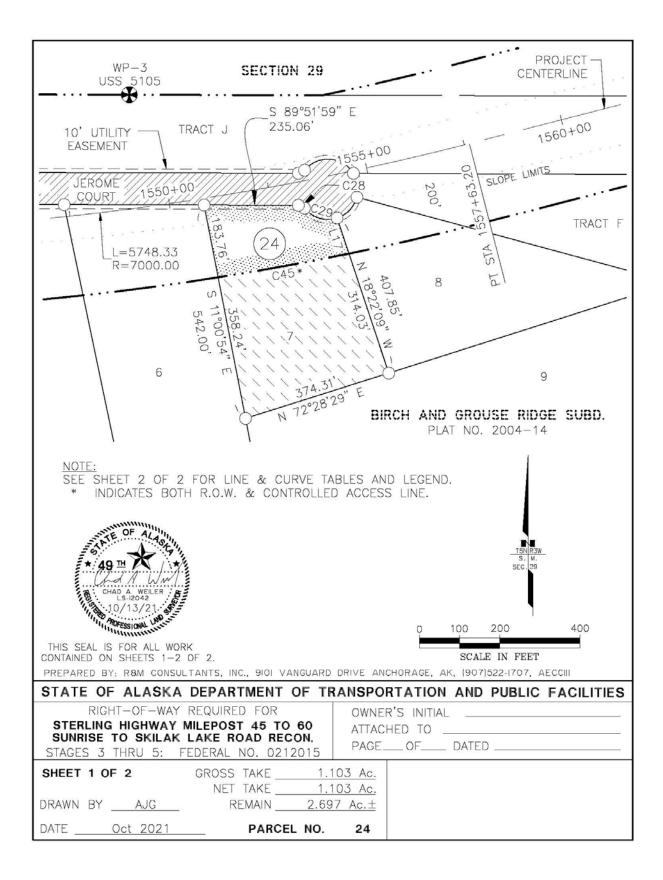
GENERAL NOTE: THIS PLAT IS USED FOR THE ESTABLISHMENT OF THE RIGHT OF WAY BOUNDARY ONLY, AND SHOULD NOT BE USED AS A BASIS FOR ESTABLISHING ADJOINING PROPERTY LINES AND CORNERS.

PREPARED BY: R8M CONSULTANTS, INC., 9101 VANGUARD DRIVE ANCHORAGE, AK, (907)522-1707, AECCIII

STATE OF ALASKA DEPARTMENT OF	TRANSPORTATION AND PUBLIC FACILITIES
RIGHT-OF-WAY REQUIRED FOR STERLING HIGHWAY MILEPOST 45 TO 60 SUNRISE TO SKILAK LAKE ROAD RECON STAGES 3 THRU 5: FEDERAL NO. 021201	
SHEET 2 OF 2         GROSS TAKE           NET TAKE	0.525 Ac.
DATEOct 2021 PARCEL N	NO. 23

25A-R640 (Rev 09/01/06)

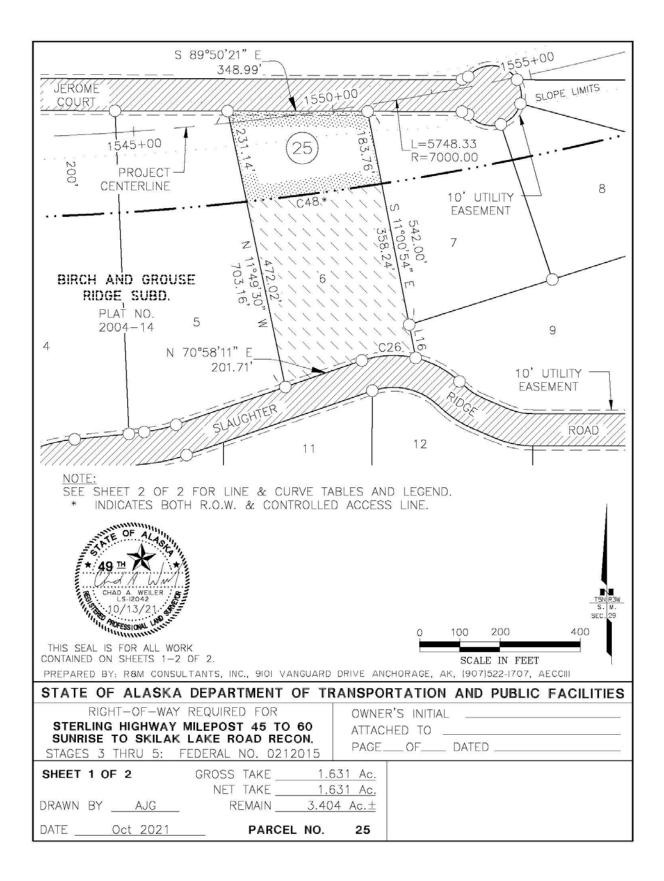
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				LINE	TABLE		
			L	INE # LENGI	H DIRECTION	1	
				L17 93.82	2' N 18°22'09"	W	
				CURVE	TABLE		
	CURVE #	LENGTH	RADIUS	DELTA	CHORD LENGTH	CHORD DIRECTION	TANGENT
	C28	17.78'	20.00'	050°56'08"	17.20'	N 64°13'50" W	9.53'
	C29	90.29'	75.00'	068*58'42"	84.94'	S 73°26'24" E	51.53'
	C45	331.76'	7200.00'	002*38'24"	331.73'	N 79°44'13" E	165.91'
	PRIMARY GOVERNMENT MONUMENT   O   MISC. PROPERTY CORNER   O   CONTROLLED ACCESS & RIGHT OF WAY LINE   EXISTING RIGHT-OF-WAY						
					-WAY REQUIRE		
		5	<u></u>				
	GENERAL NOTE: THIS PLAT IS USED FOR THE ESTABLISHMENT OF THE RIGHT OF WAY BOUNDARY ONLY, AND SHOULD NOT BE USED AS A BASIS FOR ESTABLISHING ADJOINING PROPERTY LINES AND CORNERS.						
STATE STERI SUNRI STAGES	PREPARED BY: R8M CONSULTANTS, INC., 9IOI VANGUARD DRIVE ANCHORAGE, AK, (907)522-I707, AECCIII         STATE       OF       ALASKA       DEPARTMENT       OF       TRANSPORTATION       AND       PUBLIC       FACILITIES         RIGHT-OF-WAY       REQUIRED FOR       OWNER'S INITIAL       ATTACHED TO       ATTACHED TO       ATTACHED TO         STAGES 3 THRU 5:       FEDERAL NO. 0212015       OROSS TAKE       1.103 Ac.       DATED       DATED						
	BY <u>A</u>		NET T/	AKE 1 1AIN 2.6	.103 Ac.		
DATE	Oct 2	2021		PARCEL NO.			

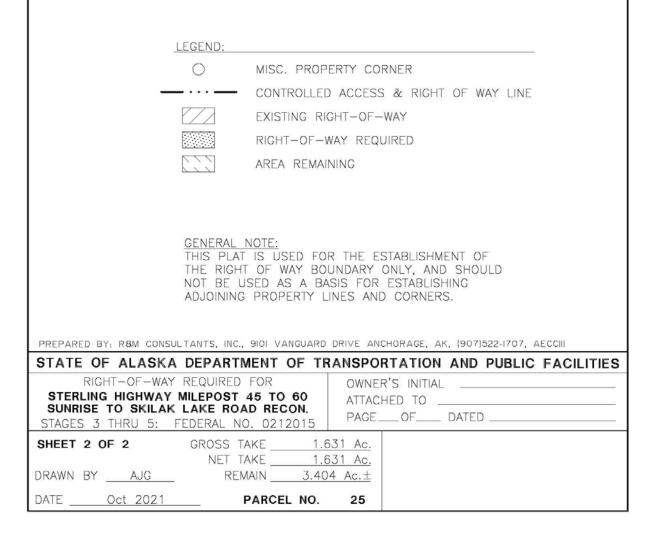
Page 33 of 49

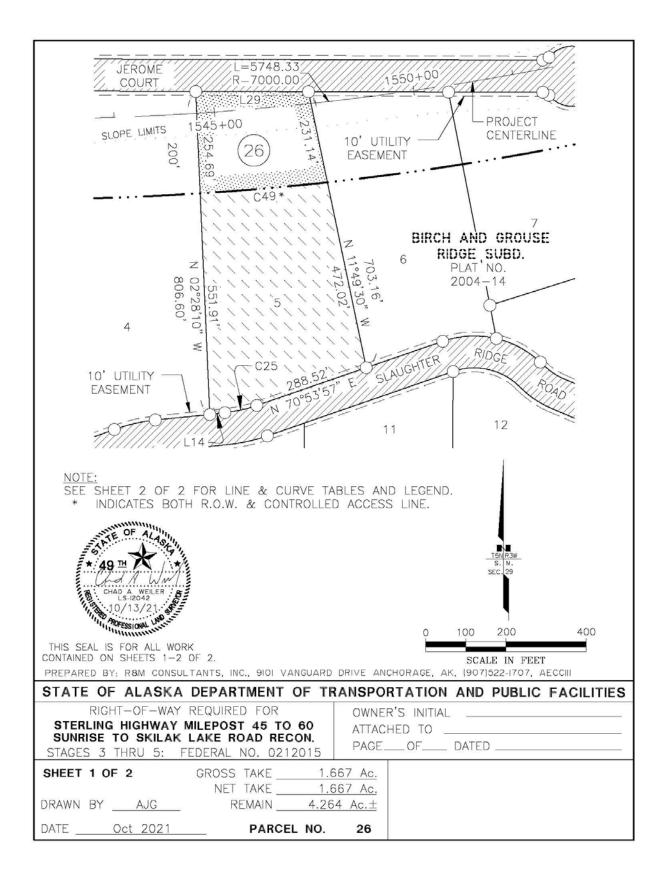


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LINE #	LENGTH	DIRECTION
516 SATS 16		177 BULLER ( 0171 B

	CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	CHORD LENGTH	CHORD DIRECTION	TANGENT
C26	135.75'	240.00'	032°24'29"	133.95'	S 87°05'19"W	69.74'
C48	339.74'	7200.00'	002°42'13"	339.71'	N 82°24'32" E	169.90'

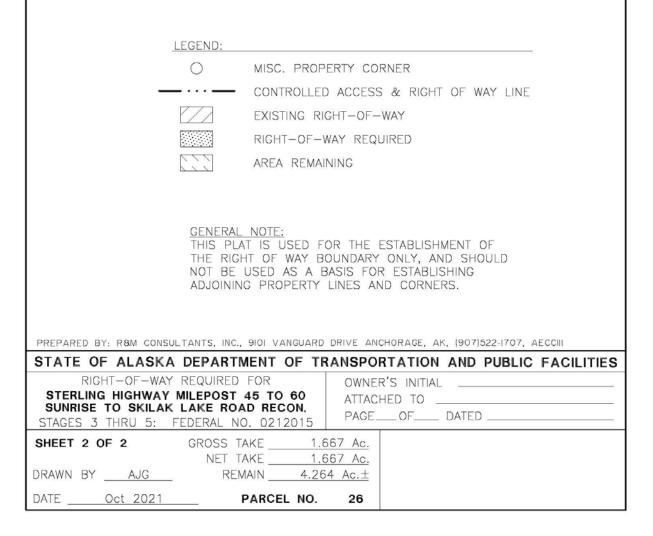


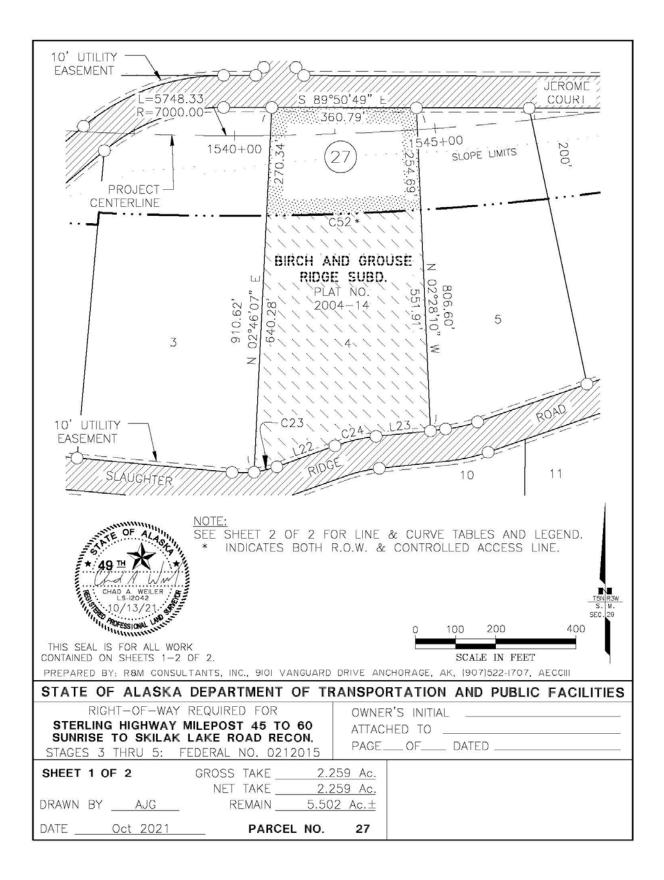


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	LINE TABLE				
LINE #	LENGTH	DIRECTION			
L14	38.15'	N 82°54'28" E			
L29	280.78'	S 89°52'22" E			

	CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	CHORD LENGTH	CHORD DIRECTION	TANGENT
C25	81.78'	360.00'	013°00'58"	81.61'	N 77°20'45" E	41.07'
C49	318.39'	7200.00'	002°32'01"	318.37'	N 85°01'39" E	159.22'



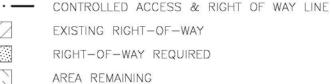


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LINE TABLE				
LINE #	LENGTH	DIRECTION		
L22	154.14'	N 70°10'33" E		
L23	136.32'	N 84°16'06" E		

	CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	CHORD LENGTH	CHORD DIRECTION	TANGENT
C23	58.22'	260.00'	012°49'45"	58.10'	N 76°48'28" E	29.23'
C24	105.26'	440.00'	013°42'22"	105.01'	S 77°01'06" W	52.88'
C52	385.15'	7200.00'	003°03'54"	385.10'	N 87°49'36″E	192.62'

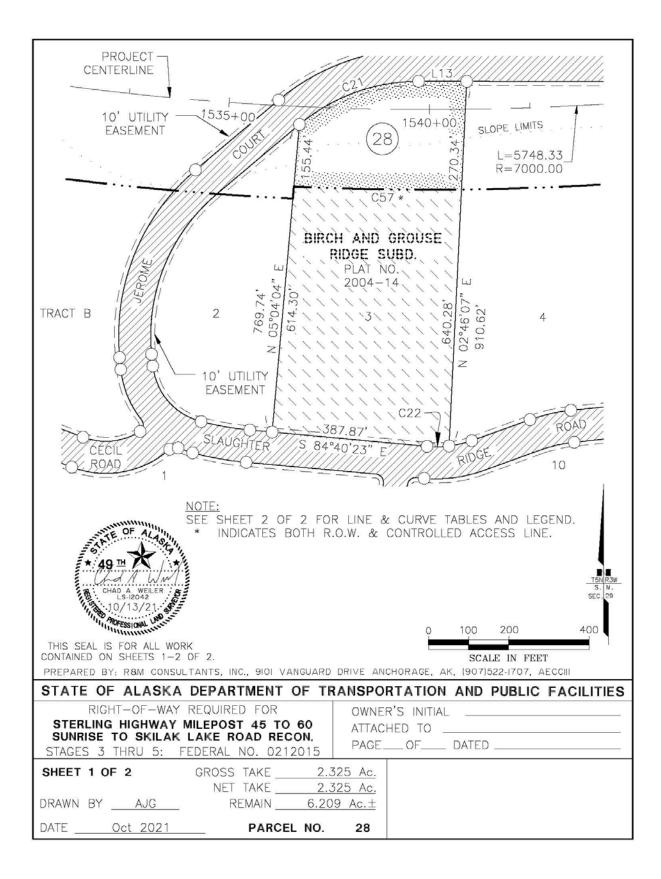




GENERAL NOTE: THIS PLAT IS USED FOR THE ESTABLISHMENT OF THE RIGHT OF WAY BOUNDARY ONLY, AND SHOULD NOT BE USED AS A BASIS FOR ESTABLISHING ADJOINING PROPERTY LINES AND CORNERS.

PREPARED BY: R8M CONSULTANTS, INC., 9101 VANGUARD DRIVE ANCHORAGE, AK, (907)522-1707, AECCIII

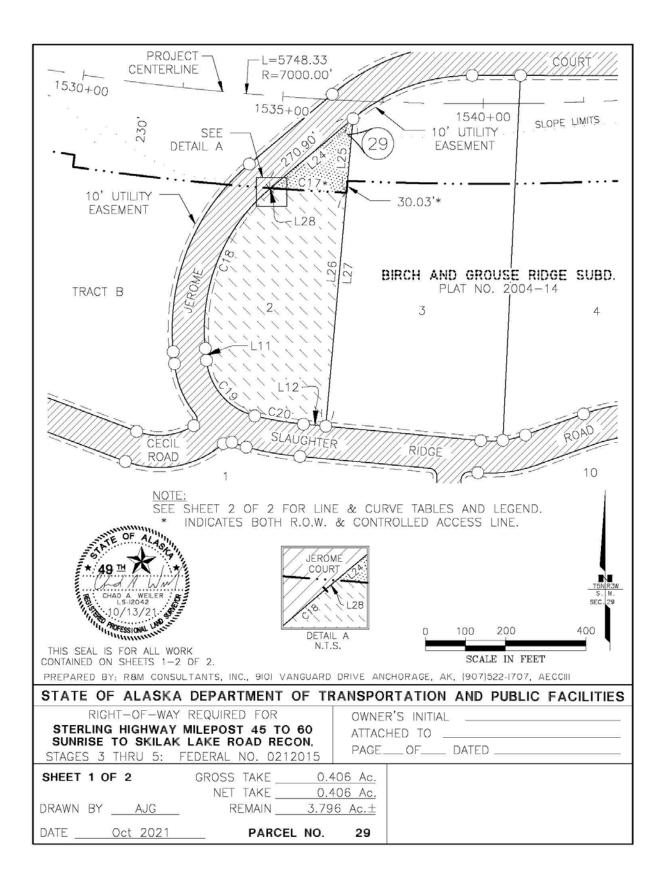
STATE OF ALASKA DEPARTMENT OF TH	RANSPORTATION AND PUBLIC FACILITIES
RIGHT-OF-WAY REQUIRED FOR STERLING HIGHWAY MILEPOST 45 TO 60 SUNRISE TO SKILAK LAKE ROAD RECON, STAGES 3 THRU 5: FEDERAL NO. 0212015	OWNER'S INITIAL ATTACHED TO PAGEOF DATED
SHEET 2 OF 2         GROSS TAKE         2.2           NET TAKE         2.2           DRAWN BY         AJG         REMAIN	
DATEOct 2021 PARCEL NO.	27



Page 40 of 49

				LINE	TABLE			
			LIN	E # LENGTH	DIRECTIO	N		
			Ľ	13 120.03'	S 89°53'40	D" E		
				CURVE	TABLE			
	CURVE #	LENGTH	RADIUS	DELTA	CHORD LENG	TH CHORD DIRECTION	TANGENT	
	C21	322.65'	460.06'	040°11'01"	316.08'	S 70°01'45" W	168.28'	
	C22	55.04'	260.00'	012°07'41"	54.93'	N 89°02'34" E	27.62'	
	C57	417.91'	7200.00'	003°19'32"	417.85'	S 88°58'41" E	209.01'	
	LEGEND:							
			0	MISC. PROP	PERTY COR	NER		
			··	CONTROLLE	D ACCESS	& RIGHT OF WAY	LINE	
		Ľ		EXISTING R	IGHT-OF-V	VAY		
				RIGHT-OF-	WAY REQU	IRED		
				AREA REMA	INING			
PREPAREI	GENERAL NOTE: THIS PLAT IS USED FOR THE ESTABLISHMENT OF THE RIGHT OF WAY BOUNDARY ONLY, AND SHOULD NOT BE USED AS A BASIS FOR ESTABLISHING ADJOINING PROPERTY LINES AND CORNERS. PREPARED BY: R8M CONSULTANTS, INC., 9101 VANGUARD DRIVE ANCHORAGE, AK, (907)522-1707, AECCIII							
2010/2 2010/2010								
STERL	STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES         RIGHT-OF-WAY REQUIRED FOR       OWNER'S INITIAL         STERLING HIGHWAY MILEPOST 45 TO 60       OWNER'S INITIAL         SUNRISE TO SKILAK LAKE ROAD RECON.       ATTACHED TO         STAGES 3 THRU 5: FEDERAL NO. 0212015       PAGE_OF_DATED							
	2 OF 2		NET TA	KE <u>2.</u> KE <u>2.</u>	325 Ac.			
DRAWN E				AIN6.20				
DATE	Oct 2	2021	P	ARCEL NO.	28			

Page 41 of 49



Page 42 of 49

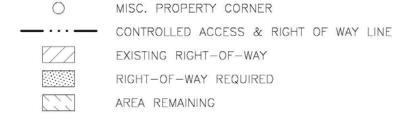
	LINE	TABLE
LINE #	LENGTH	DIRECTION
L11	29.76'	S 05°53'24" E
L12	55.85'	S 84°50'01" E
L24	269.12'	N 49°54'17" E
L25	185.47'	S 05°04'04" W
L26	584.27'	N 05°04'04" E
L27	769.74'	N 05°04'04" E
L28	1.78'	S 49°54'17" W

CURVE TABLE							
CURVE #	LENGTH	RADIUS	DELTA	CHORD LENGTH	CHORD DIRECTION	TANGENT	
C17	189.83'	7230.00'	001°30'16"	189.83'	S 86°33'11" E	94.92'	
C18	357.58'	460.00'	044°32'18"	348.64'	S 16°26'52" W	188.37'	
C19	195.40'	160.00'	069°58'18"	183.48'	S 41°03'22" E	111.97'	
C20	123.23'	760.00'	009°17'26"	123.10'	S 80°16'57" E	61.75'	



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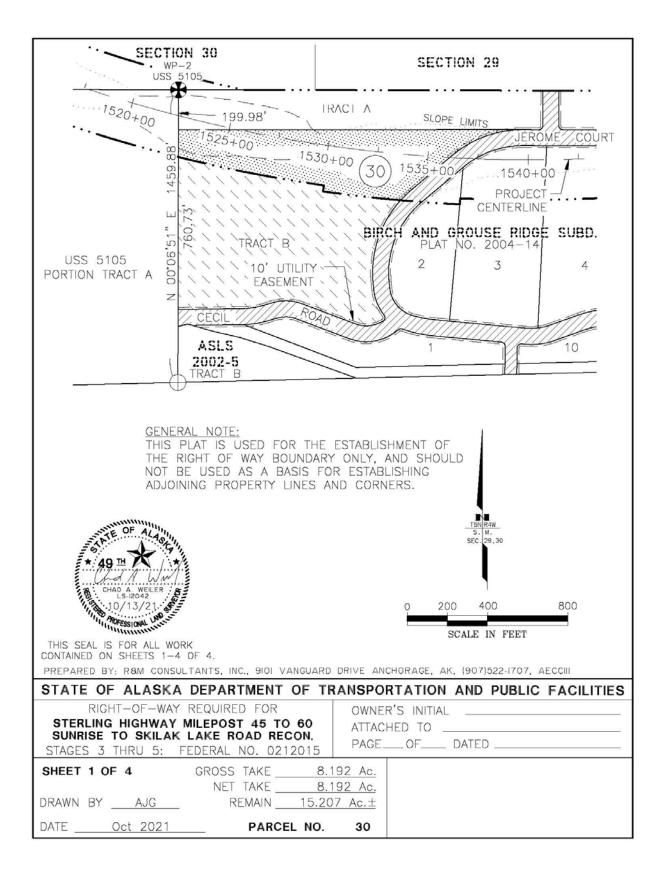


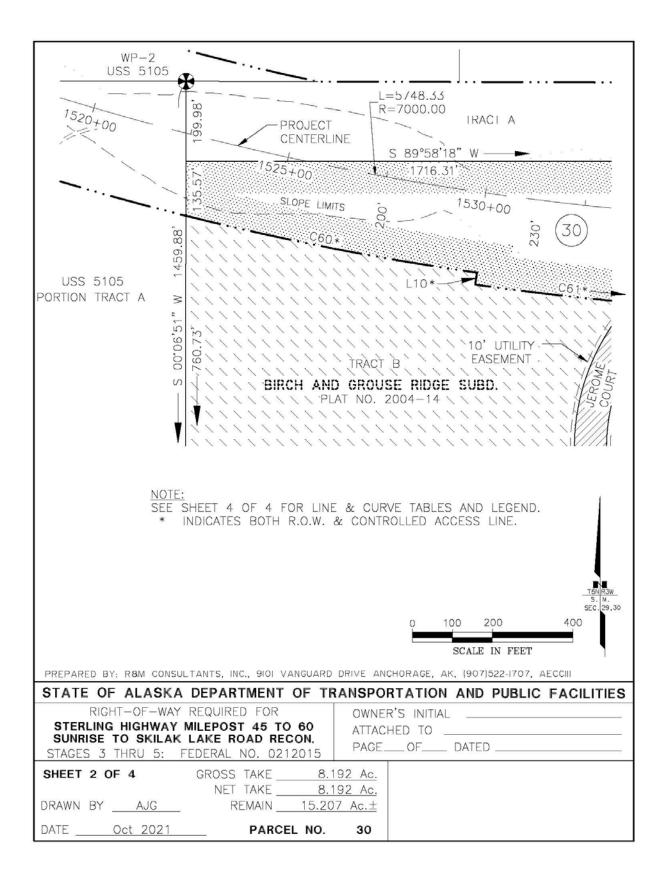
#### GENERAL NOTE:

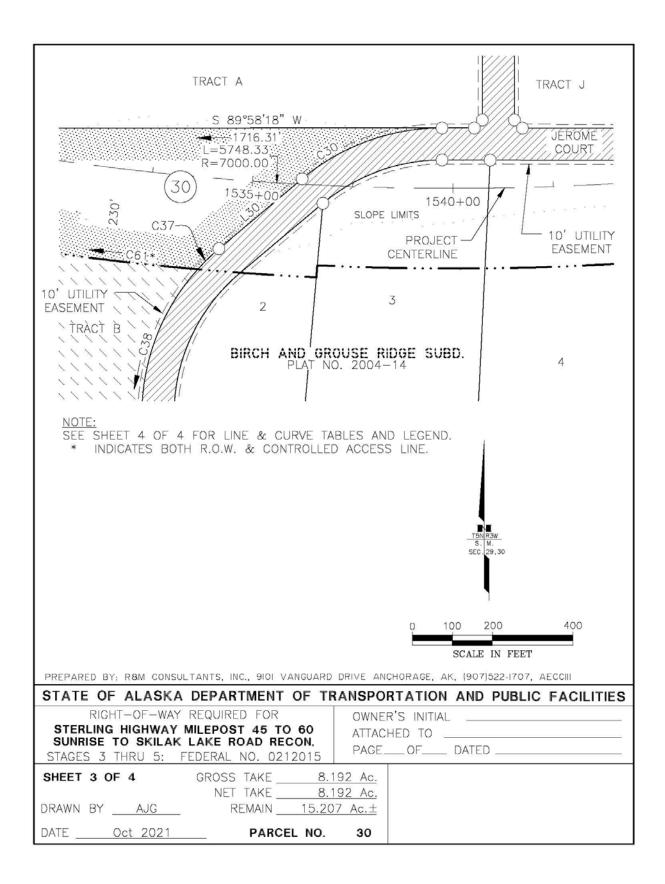
THIS PLAT IS USED FOR THE ESTABLISHMENT OF THE RIGHT OF WAY BOUNDARY ONLY, AND SHOULD NOT BE USED AS A BASIS FOR ESTABLISHING ADJOINING PROPERTY LINES AND CORNERS.

PREPARED BY: R8M CONSULTANTS, INC., 9101 VANGUARD DRIVE ANCHORAGE, AK, (907)522-1707, AECCIII

STATE OF ALASKA DEPARTMENT OF TH	ANSPORTATION AND PUBLIC FACILITIES
RIGHT-OF-WAY REQUIRED FOR STERLING HIGHWAY MILEPOST 45 TO 60 SUNRISE TO SKILAK LAKE ROAD RECON. STAGES 3 THRU 5: FEDERAL NO. 0212015	OWNER'S INITIAL ATTACHED TO PAGEOF DATED
SHEET 2 OF 2         GROSS TAKE         0.4           NET TAKE         0.4           DRAWN BY         AJG         REMAIN         3.79	106 Ac.
DATEOct 2021 PARCEL NO.	29

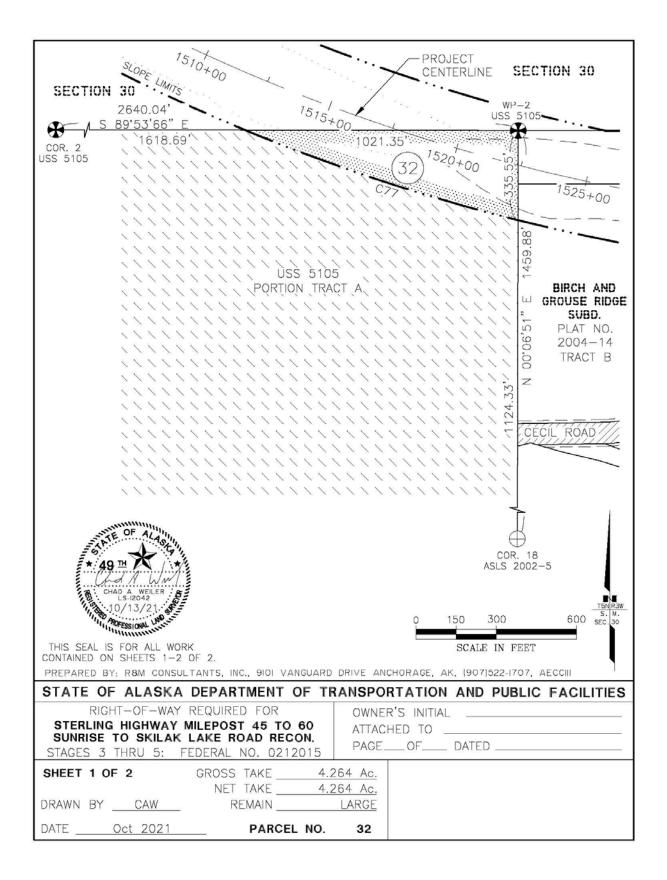






Page 46 of 49

	LINE				LINE	TABLE		
			1.1	[NE #	LENGTH	DIRECTION	I	
				L10 30.00		S 08°07'24"	W	
				L30	270.81'	N 49°54'22"	E	
				(	CURVE	TABLE		
	CURVE #	LENGTH	RADIUS	DEI	LTA	CHORD LENGTH	CHORD DIRECTION	TANGENT
	C30	378.87'	540.00'	040°1	1'56"	371.14'	S 70°02'46" W	197.61'
	C37	74.13'	540.00'	007*5	51'55"	74.07'	S 45°58'39" W	37.12'
	C38	451.09'	540.00'	047°5	51'45"	438.09'	S 18°06'49" W	239.65'
	C60	739.50'	7200.00'	005*5	53'05"	739.17'	S 78°56'03" E	370.07'
	C61	388.71'	7230.00'	003°0	4'49"	388.66'	S 83°25'00" E	194.40'
	LEGEND:         Image: PRIMARY GOVERNMENT MONUMENT         Image: PRIMARY PROPERTY Corner         Image: Property Property Corner         Image: Property Property Property Corner         Image: Property Propery Property Property Property Property Propery Propery P							INE
PREPARED BY: R8M CONSULTANTS, INC., 9IOI VANGUARD DRIVE ANCHORAGE, AK, (907)522-I707, AECCIII         STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES         RIGHT-OF-WAY REQUIRED FOR         STERLING HIGHWAY MILEPOST 45 TO 60         SUNRISE TO SKILAK LAKE ROAD RECON.         STAGES 3 THRU 5: FEDERAL NO. 0212015         SHEET 4 OF 4       GROSS TAKE								
DATE						30		
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	CURVE TABLE									
	CURVE #	LENGTH	RADIUS	DELTA	CHORD LENGTH	CHORD DIRECTION	TANGENT			
	C77	1075.99'	7200.00'	008°33'45"	1074.99'	S 71°42'38" E	539.00'			
		LEGEN	ND:				_			
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PREPARED	BY: R8M	CONSULTAN	ITS, INC., 91	OI VANGUARD	DRIVE ANCHORA	GE, AK, (907)522-170	7, AECCIII			
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SUNRIS	SE TO SK	ILAK LA	KE ROAD	RECON.		DATED				
				0212015 E4.2		are obtain term				
			NET TAK	E4.2	64 Ac.					
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DATE	Oct 2	021	PA	RCEL NO.	32					

Introduced by:	Mayor
Date:	04/05/22
Hearing:	04/19/22
Action:	
Vote:	

### KENAI PENINSULA BOROUGH ORDINANCE 2022-09

### AN ORDINANCE AUTHORIZING A NEGOTIATED LEASE AT LESS THAN FAIR MARKET VALUE OF CERTAIN REAL PROPERTY CONTAINING 3.5 ACRES MORE OR LESS TO THE ANCHOR POINT FOOD PANTRY FOR A FOOD PANTRY AND OTHER COMMUNITY USES

WHEREAS, the Kenai Peninsula Borough ("the borough") owns the subject property; and

- WHEREAS, Resolution 2021-075 classified 3.5 acres of land as institutional; and
- WHEREAS, the Anchor Point Food Pantry ("APFP") has submitted an application for negotiated lease of the 3.5 acres of land; and
- **WHEREAS,** the APFP's application includes a plan for phased development of a community food pantry with longer term plans of expansion to include a community center; and
- **WHEREAS**, entering into a negotiated lease of the property to the APFP meets an identifiable community need which is supported by the borough's Comprehensive Plan Land Use Objective F Strategy 1(c); and
- WHEREAS, the Anchor Point Advisory Planning Commission at its regularly scheduled meeting of April 7, 2022 recommended \_\_\_\_\_; and
- **WHEREAS,** the borough's planning commission at its regularly scheduled meeting of April 11, 2022, recommended \_\_\_\_\_;

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

SECTION 1. That leasing 3.5 acres, described as: A 3.5 acre portion of the S1/2NE1/4 Per WD Book 143, Page 830 and Per QCD Book 194, Page 985, excluding that portion as per Commissioners QCD Book 194, Page 990, Section 4, T5S, R15W, Seward Meridian, Third Judicial District, State of Alaska, to the Anchor Point Food Pantry (APFP) at other than fair market value, pursuant to KPB 17.10.100 (I) and 17.10.120 (D) is in the best interest of the borough based on the following findings of facts:

- A. The APFP is currently in need of relocation to develop long term facilities to meet ongoing community needs through its weekly meal and food distribution programs.
- B. The APFP is organized and has a demonstrated history of providing and operating a food pantry for the public in the community at large.
- C. The identified location is an appropriate location for the proposed land use and is consistent with the land classification.
- F. Leasing the property to the Anchor Point Food Pantry meets an identifiable community land use need which is supported by the borough's Comprehensive Plan Land Use Objective F Strategy 1(c).
- G. The lease shall contain a condition that the land use is open to the public.
- **SECTION 2.** That based on the foregoing, the mayor is hereby authorized, pursuant to KPB 17.10.100 (I) to lease the land described in Section 1 above to APFP for a period of 20 years, with a 10-year renewal provision, at a rental rate equal to the unexempted real property tax rate, as determined by multiplying the most recent assessed value of the land by the effective real property tax mill rate for the locality, per year subject to the terms and conditions of this ordinance and subject to the terms and conditions substantially similar to those contained in the lease accompanying this ordinance. The authorization is for lease solely to the APFP and it may not assign any rights to negotiate or enter an agreement for lease to any other person or entity.

All other applicable terms and conditions of KPB Chapter 17.10 shall apply to this sale unless inconsistent with this ordinance.

- **SECTION 3.** That in consideration for the lease at less than fair market value the property leased to APFP is subject to the restriction that the land shall be used solely for community food pantry, community gatherings, community center uses and related activities. APFP shall have the right to regulate use and may restrict use, provided that the manner of use is open to anyone regardless of race, color, religion, national origin, gender, marital status, pregnancy, parenthood or political affiliation. In the event APFP does not use, or ceases to use, the land leased as specified herein, the borough may terminate the lease.
- **SECTION 4.** That the mayor is authorized to sign any documents necessary to effectuate this ordinance.
- **SECTION 5**. That APFP shall have until 180 days after enactment of this ordinance to accept this offer by execution of the lease.
- SECTION 6. That this ordinance takes effect immediately upon enactment.

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

ATTEST:

Brent Johnson, Assembly President

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

# Kenai Peninsula Borough

Planning Department – Land Management Division

# MEMORANDUM

TO:	Brent Johnson, Assembly President Members, Kenai Peninsula Borough Assembly
THRU:	Charlie Pierce, Mayor 🕼 Melanie Aeschliman, Planning Director 🦷
FROM:	Marcus Mueller, Land Management Officer
DATE:	March 24, 2022
RE:	Ordinance 2022- <u>09</u> _, Authorizing a Negotiated Lease at Less Than Fair Market Value of Certain Real Property Containing 3.5 Acres More or Less to the Anchor Point Food Pantry for a Food Pantry and Other Community Uses (Mayor)

The Anchor Point Food Pantry (APFP) is a volunteer led local non-profit that has provided weekly meal service and food distribution for the greater Anchor Point area in partnership with several other organizations. APFP is working on plans to develop a long-term facility to continue their mission, with goals to expand services to the community.

APFP has applied for a negotiated lease of 3.5 acres of borough land, which was classified as institutional by Resolution 2021-075, located along School Avenue in Anchor Point. The property is currently being surveyed to form "Common Ground Subdivision" through the platting process.

This ordinance would authorize the Mayor to execute a 20-year lease, with one 10-year renewal option to APFP, with annual rental at a property tax rate equivalent for the 3.5-acre parcel of land. The lease is specified for purposes of community food pantry, community gatherings, community center uses and related activities, with a requirement that the uses be open to the general public.

Your review and consideration of this ordinance is appreciated.

# KENAI PENINSULA BOROUGH REAL PROPERTY LEASE

For good and valuable consideration, and pursuant to Ordinance 2022-\_\_, enacted \_\_\_\_, 2022, the Kenai Peninsula Borough, an Alaska municipal corporation whose address is 144 North Binkley Street, Soldotna, Alaska 99669, ("KPB"), grants to the Anchor Point Food Pantry, an Alaska non-profit corporation, PO Box 266 Anchor Point, AK 99556 ("Lessee" or "APFP"), use of the following described parcel of real property ("the Property") situated in the Homer Recording District, Third Judicial District, State of Alaska, and described as follows:

A 3.5 acre portion of the S1/2NE1/4 Per WD Book 143, Page 830 and Per QCD Book 194, Page 985, excluding that portion as per Commissioners QCD Book 194, Page 990, Section 4, T5S, R15W, Seward Meridian, State of Alaska, containing 3.5 acres, more or less, subject to survey and platting, as shown on Exhibit A, Plan of Survey.

# PURPOSE OF LEASE

Pursuant to Ordinance 2022-\_\_\_\_ the purpose of this Lease is for the development, use, and maintenance of a community food pantry and community center and other related activities, as described in Lessee's Approved Development Plan ("the Development Plan"), attached hereto and incorporated by reference. The Property shall be used for the purposes within the scope of the application, the terms and conditions of the Lease, and in conformity with the Lessee's Development Plan. Use or development for other than allowed purposes shall subject the Lease to termination.

- a. <u>Modification of Development Plan</u>. The Development Plan may be modified by mutual agreement to advance the purpose of this Lease. Modifications of Lessee's development plan may be made through the written approval of the KPB Mayor of a modified development plan submitted by Lessee to the KPB in writing at least 60 days prior to anticipated modification of uses or improvements on the Lease. Approved modifications shall be attached to this Lease and effective upon the Mayor's written approval.
- b. <u>Special Requirements.</u> KPB may impose special requirements under this Lease as it deems reasonable and necessary to advance the public's best interest in the management of the Property.

# TERMS AND CONDITIONS

- 1. <u>Lease Term</u>. This Lease is for a term of 20 years commencing May 15, 2022, and terminating May 14, 2042. Lessee shall have the option to renew this Lease for one additional ten (10) year term. Renewal option shall be exercised in writing by Lessee no less than 90 days in advance of the expiration of the initial term.
- 2. Lease Rental. Pursuant to KPB Ordinance 2022-\_\_\_ the annual lease rental for the term of this Lease shall be equal to the unexempted real property tax rate, as determined by multiplying the most recent assessed value of the land by the effective real property tax mill rate for the locality. Payment shall be made in advance, on or before 15<sup>th</sup> day of May of every year of the said term. The lease rental amount is separate from and in addition to any real property tax that the Lessee is responsible for under the Lease. The rental for the 1<sup>st</sup> year of the Lease is calculated at \$280.00.
- 3. <u>Use By General Public</u>. In consideration for the Lease at less than fair market value the Property leased to APFP is subject to the restriction that the Property shall be used solely for community food pantry, community gatherings, community center uses and related activities. Lessee shall have the right to regulate use and may restrict use, provided that the manner of use is open to anyone regardless of race, color, religion, national origin, gender, marital status, pregnancy, parenthood or political affiliation. In the event Lessee does not use, or ceases to use, the Property leased as specified herein, KPB may terminate the lease.
- 4. <u>Waste</u>. Lessee shall not commit waste or injury upon the Property leased herein.
- 5. <u>Fire Protection</u>. Lessee shall take all reasonable precautions to prevent, and take all reasonable actions to suppress, destructive and uncontrolled grass, brush, and forest fires on the Property, and comply with all laws, regulations and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the Property is located.
- 6. <u>Safety</u>. Lessee shall be solely responsible for maintaining the Property in a safe and fit condition, including without limitation snow and ice removal from all improvements and areas on the Property developed or used for pedestrian traffic.
- 7. <u>Sanitation</u>. Lessee shall comply with all laws, regulations or ordinances promulgated for the promotion of sanitation. The Property shall be kept in a clean and sanitary condition and every effort shall be made to prevent pollution of the waters and lands.
- 8. <u>Hazardous Materials and Hazardous Waste</u>. Except as may be authorized through an approved development plan as customary and necessary for shooting range facilities, including provisions for the means and methods of handling and management of materials, the storage, handling and disposal of hazardous waste shall not otherwise be allowed on lands under lease from KPB per KPB Code, Section 17.10.240(H).

Lessee shall comply with all applicable laws and regulations concerning hazardous chemicals and other hazardous materials, and shall properly store, transfer and use all

hazardous chemicals and other hazardous materials and not create any environmental hazards on the lands leased herein. In no event may LESSEE utilize underground storage tanks for the storage or use of hazardous chemicals or other hazardous materials.

Should any hazardous chemicals or hazardous materials of any kind or nature whatsoever, or hazardous wastes be released upon the subject lands during the term of this lease, Lessee shall IMMEDIATELY report such release to the KPB Planning Director or other appropriate KPB official and to any other agency as may be required by law, and Lessee shall, at its own cost, assess, contain and clean up such spilled materials in the most expedient manner allowable by law.

As used herein, "hazardous chemical" means a chemical that is a physical hazard or a health hazard.

As used herein, "hazardous material" means a material or substance, as defined in 49 C.F.R. 171.8, and any other substance determined by the federal government, the state of Alaska or KPB, to pose a significant health and safety hazard.

As used herein, "hazardous waste" means a hazardous waste as identified by the Environmental Protection Agency under 40 C.F.R. 261, and any other hazardous waste as defined by the federal government, the state of Alaska or KPB.

The covenants and obligations described in this article shall survive the termination of this lease.

- 9. <u>Compliance with Laws</u>. Lessee agrees to comply with all applicable federal, state, borough and local laws and regulations.
- 10. <u>Easements and Rights-of-Way</u>. This Lease is subject to all easements, rights-of-way, covenants and restrictions of which Lessee has actual or constructive notice. KPB reserves and retains the right to grant additional easements for utility and public access purposes across the Property and nothing herein contained shall prevent KPB from specifically reserving or granting such additional easements and rights-of-way across the Property as may be deemed reasonable and necessary.

As the parties agree that this is a reserved right which is reflected in the annual lease rental, in the event that KPB grants future additional easements or rights-of-way across the Pproperty, it is agreed and understood that Lessee shall receive no damages for such grant.

11. <u>Inspections</u>. Lessee shall allow KPB, through its duly authorized representative, to enter and inspect the Property at any reasonable time, with or without advance notice to Lessee, to ensure compliance with the terms and conditions of this lease. KPB's right to enter and inspect shall be exercised at KPB's sole discretion and the reservation or exercise of this right, and any related action or inaction by KPB, shall not in any way impose any obligation whatsoever upon KPB, and shall not be construed as a waiver of any rights of KPB under this Lease.

# 12. Indemnification and Liability Insurance.

- a. <u>Indemnification and Hold Harmless</u>. The Lessee shall indemnify, defend, save and hold KPB, its elected and appointed officers, agents, volunteers, counsel, and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys' fees resulting from Lessee's performance or failure to perform in accord with the terms of this lease in any way whatsoever. The Lessee shall be responsible under this clause for any and all claims of any character resulting from Lessee or Lessee's officers, agents, employees, partners, attorneys, suppliers, and subcontractors performance or failure to perform this agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by KPB or its agents, which are said to have contributed to the losses, failure, violations, or damage. However, Lessee shall not be responsible for any damages or claims arising from the sole negligence or willful misconduct of the borough, its agents, or employees.
- b. <u>Liability Insurance</u>. Lessee shall purchase at its own expense and maintain in force at all times during the term of this Lease <u>Comprehensive General Liability</u> <u>Insurance</u>, which shall include bodily injury, personal injury, and property damage with respect to the property and the activities conducted by the Lessee in which the coverage shall not be less than \$1,000,000 per occurrence. The policy purchased shall name Lessee as the insured and KPB as an additional insured, and shall also require the insurer to provide KPB with thirty (30) days or more advance written notice of any pending cancellation or change in coverage. Insurance coverage limits shall be adjusted every 10 years to match KPB's then-current standard limit requirements for similar contracts.
- c. <u>Proof of Insurance</u>. At the time of executing this agreement, and at the time of each renewal of insurance, Lessee shall deliver to the KPB Planning Director certificates of insurance meeting the above criterion.
- 13. <u>Property Taxes</u>. Lessee shall timely pay all real property taxes, assessments and other debts or obligations owed to KPB. Pursuant to KPB Code, Section 17.10.120(F) this agreement will terminate automatically should Lessee become delinquent in the payment of any such obligations.
- 14. <u>Assignments</u>. Lessee may assign this Lease only if approved in advance by KPB. Applications for assignment shall be made in writing on a form provided by the Land Management Division. The assignment shall be approved if it is found that all interests of KPB are fully protected. The assignee shall be subject to and governed by the provisions of this Lease and laws and regulations applicable thereto.
- 15. <u>Subleasing</u>. No Lessee may sublease lands or any part thereof without written permission of the KPB Mayor when applicable. A sublease shall be in writing and subject to the terms and conditions of the original lease.

- 16. <u>Cancellation</u>. At any time that this Lease is in good standing it may be canceled in whole or in part upon mutual written agreement by the Lessee and either the KPB Mayor or Planning Director when applicable. This Lease is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts.
- 17. <u>Termination</u>. Upon termination of this Lease, Lessee covenants and agrees to return the Property to KPB in a neat, clean and sanitary condition, and to immediately remove all items of personal property subject to the terms and conditions of paragraph 21 below. All terms and conditions set out herein are considered to be material and applicable to the use of the Property under this Lease. Subject to the following, in the event of Lessee's default in the performance or observance of any of the agreement terms, conditions, covenants and stipulations thereto, and such default continues thirty (30) calendar days after written notice of the default, KPB may terminate this lease, or take any legal action for damages or recovery of the Property. No improvements may be removed during the time in which the contract is in default.

In the event Lessee breaches any provisions prohibiting the release of hazardous chemicals, hazardous materials or hazardous waste upon the Property, and fails to immediately terminate the operation causing such release upon notice from KPB, then KPB may immediately terminate this Lease without further notice to Lessee.

- 18. <u>Violation</u>. Violation of any of the terms of this Lease may expose Lessee to appropriate legal action including forfeiture of lease/purchase interest, termination, or cancellation of its interest in accordance with state law.
- 19. <u>Notice of Default</u>. Notice of the default, where required, will be in writing and as provided in the Notice provision of this agreement.
- 20. <u>Entry or Re-entry</u>. In the event that the Lease is terminated, canceled or forfeited, or in the event that the Property, or any part thereof, should be abandoned by the Lessee during the Lease term, KPB or its agents, servants or representatives, may immediately or any time thereafter, enter or re-enter and resume possession of the Property or such part thereof, and remove all persons and property therefrom either without judicial action where appropriate, by summary proceedings or by a suitable action or proceeding at law or equity without being liable for any damages therefor. Entry or re-entry by KPB shall not be deemed an acceptance of surrender of the contract.
- 21. <u>Removal or Reversion of Improvements Upon of Lease</u>.
  - a. Improvements on the property owned by Lessee shall, within thirty calendar days after the termination of the Lease, be removed by Lessee; provided such removal will not cause injury or damage to the Property; and further provided that the Mayor, or Planning Director when applicable, may extend the time for removing such improvements in cases where hardship is proven. The Lessee may dispose of its improvements to a succeeding Lessee with the consent of the KPB Mayor.
  - b. If any improvements and/or chattels having an appraised value in excess of ten thousand dollars, as determined by a qualified appraiser, are not removed within

the time allowed, such improvements and/or chattels shall, upon due notice to the Lessee under the terminated or canceled contract, be sold at public sale under the direction of the KPB Mayor and in accordance with the provisions of KPB Code. The proceeds of the sale shall inure to the Lessee who placed such improvements and/or chattels on the Property, or its successors in interest, after paying to KPB all monies due and owing plus all costs, fees and expenses incurred in storing the goods and making such a sale. In case there are no other bidders at any such sale, the KPB Mayor is authorized to bid, in the name of KPB, on such improvements and/or chattels. The bid money shall be taken from the fund to which said Property belongs, and the fund shall receive all moneys or other value subsequently derived from the sale or leasing of such improvements and/or chattels. KPB shall acquire all the rights, both legal and equitable, that any other purchaser could acquire by reason of the purchase.

- c. If any improvements and/or chattels having an appraised value of ten thousand dollars or less, as determined by the KPB Mayor, are not removed within the time allowed, such improvements and/or chattels shall revert and absolute title shall vest in KPB. Upon request, the purchaser, Lessee, or permittee shall convey said improvements and/or chattels by appropriate instrument to KPB.
- 26. <u>Rental for Improvements or Chattels not Removed</u>. Any improvements and/or chattels belonging to the Lessee or placed on the Property during its tenure with or without its permission and remaining upon the Property after the termination of the Lease shall entitle KPB to charge a reasonable rent therefor.
- 27. <u>Resale</u>. In the event that this Lease should be terminated, canceled, forfeited or abandoned, KPB may offer the Property for sale, lease or other appropriate disposal pursuant to the provisions of KPB Code, Chapter 17.10 or other applicable regulations. If the Property is not immediately disposed of, then said land shall return to the Land Bank.
- 28. <u>Notice</u>. Any notice or demand, which under the terms of this Lease must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the Lease. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.

All notices shall be sent to both parties as follows:

Lessor KENAI PENINSULA BOROUGH Planning Director 144 N. Binkley Soldotna, AK 99669-7599

Lessee Anchor Point Food Pantry Melissa Martin, President PO Box 266 Anchor Point, AK 99556

- 29. <u>Responsibility of Location</u>. It shall be the responsibility of the Lessee to properly locate itself and its improvements on the leased lands.
- 30. <u>Liens and Mortgages</u>. Lessee shall not cause or allow any liens of any kind or nature whatsoever to attach to the property during the term of this lease, except in connection with financing transactions as discussed below. In the event that any prohibited lien is placed against the Property, Lessee shall immediately cause the lien to be released. Lessee shall immediately refund to KPB any monies that KPB may, at its sole discretion, pay in order to discharge any such lien, including all related costs and a reasonable sum for attorneys' fees.

For the purpose of interim or permanent financing of improvements to be placed upon the Property, and for no other purpose, Lessee, after giving written notice thereof to KPB, may encumber by mortgage, deed of trust, assignment or other appropriate instrument, Lessee's interest in the Property and in and to this Lease, provided such encumbrance pertains only to such leasehold interest and does not pertain to or create any interest in KPB's title to or interest in the Property. Any such encumbrance shall be entirely subordinate to KPB's rights and interest in the Property.

A leasehold mortgagee, beneficiary of a deed of trust or security assignee shall have and be subrogated to any and all rights of the Lessee with respect to the curing of any default hereunder by Lessee.

In the event of cancellation or forfeiture of this Lease for cause, the holder of a properly recorded mortgage, deed of trust, or assignment will have the option to acquire the Lease for the unexpired term thereof, subject to the same terms and conditions as in the original instrument.

- 31. <u>Non-Waiver Provision</u>. The receipt of payment by KPB, regardless of KPB's knowledge of any breach by Lessee, or of any default on the part of the Lessee in observance or performance of any of the conditions or covenants of this Lease, shall not be deemed to be a waiver of any provision of the agreement. Failure of KPB to enforce any covenant or provision herein contained shall not discharge or invalidate such covenant or provision or affect the right of KPB to enforce the same in the event of any subsequent breach or default. The receipt by KPB of any payment of any other sum of money after notice of termination or after the termination of the Lease for any reason, shall not reinstate, continue or extend the Lease, nor shall it destroy or in any manner impair the efficacy of any such notice of termination unless the sole reason for the notice was nonpayment of money due and the payment fully satisfies the breach.
- 32. <u>Jurisdiction</u>. Any suits filed in connection with the terms and conditions of this Lease, and of the rights and duties of the parties, shall be filed and prosecuted in the Third Judicial District at Homer, Alaska and shall be governed by Alaska law.
- 33. <u>Savings Clause</u>. Should any provision of this Lease fail or be declared null or void in any respect, or otherwise unenforceable, it shall not affect the validity of any other provision of this Lease or constitute any cause of action in favor of either party as against the other.

- 34. <u>Binding Effect</u>. It is agreed that all covenants, terms and conditions of this Lease shall be binding upon the successors, heirs and assigns of the original parties hereto.
- 35. <u>Full and Final Agreement</u>. This Lease constitutes the full and final agreement of the parties hereto and supersedes any prior or contemporaneous agreements. This Lease may not be modified orally, or in any manner other than by an agreement in writing and signed by both parties or their respective successors in interest. Lessee avers and warrants that no representations not contained within this Lease have been made with the intention of inducing execution of this Lease.
- 36. Lessee warrants that the persons executing this agreement are authorized to do so on behalf of APFP.

Anchor Point Food Pantry	KENAI PENINSULA BOROUGH
Melissa J. Martin, President	Charlie Pierce, Mayor
Dated:	Dated:
Chris Anne Syme, Secretary	
Dated:	
ATTEST:	APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY:
Johni Blankenship Borough Clerk	A. Walker Steinhage Deputy Borough Attorney

#### NOTARY ACKNOWLEDGMENT

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)

)ss.

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

The foregoing instrument was acknowledged before me this \_\_\_\_\_day of \_\_\_\_\_, 2022, by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

Notary Public in and for Alaska My commission expires: \_\_\_\_\_

# NOTARY ACKNOWLEDGMENT

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

The foregoing instrument was acknowledged before me this \_\_\_\_\_day of \_\_\_\_\_, 2022, by Melissa J. Martin, President, Anchor Point Food Pantry, an Alaska non-profit corporation, for and on behalf of the corporation.

Notary Public in and for Alaska My commission expires: \_\_\_\_\_

# NOTARY ACKNOWLEDGMENT

) )ss.

)

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

The foregoing instrument was acknowledged before me this \_\_\_\_\_day of \_\_\_\_\_, 2022, by Chris Anne Syme, Secretary, Anchor Point Food Pantry, an Alaska non-profit corporation, for and on behalf of the corporation.

Notary Public in and for Alaska My commission expires:

Return to: Kenai Peninsula Borough Land Management Division 144 N. Binkley Street Soldotna, AK 99669

Dated:\_\_\_

Charlie Pierce, Mayor

**KENAI PENINSULA BOROUGH** 

# **Prepared by and Return to:**

Kenai Peninsula Borough Attn: Land Management Division 144 N. Binkley St. Soldotna, AK 99669

Grantor: Kenai Peninsula Borough Grantee: Anchor Point Food Pantry Legal Description: Lot 4, Common Ground Subdivision, Plat No 2022-\_\_\_ Homer Recording District, Alaska

(Above 2" Space for Recorder's Use Only)

# **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 ("Lessor") and ANCHOR POINT FOOD PANTRY, an Alaska non-profit corporation, having a mailing address of PO Box 266, Anchor Point, AK 99556 ("Lessee").

- 1. Lessor and Lessee entered into a certain Real Property Lease ("Lease") on the 15<sup>th</sup> day of May, 2022, for the purpose of development, use, and maintenance of a community food pantry and community center and other related activities, as described in Lessee's Approved Development Plan. All of the foregoing is set forth in the Lease.
- 2. The initial lease term will be twenty (20) years commencing on the Effective Date with one (1) ten (10) year option to renew.
- 3. The Real Property being leased to Lessee is described as Lot 4, Common Ground Subdivision, Plat No. 2022-22, Homer Recording District, Third Judicial District, State of Alaska.
- 4. Lessor and Lessee now desire to execute this Memorandum to provide constructive knowledge of Lessee's lease of the Real Property.
- 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.

Anchor Point Food Pantry

Melissa J. Martin, President

Dated:

Chris Anne Syme, Secretary

Dated: \_\_\_\_\_

ATTEST:

# APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY:

Johni Blankenship Borough Clerk A. Walker Steinhage Deputy Borough Attorney

# NOTARY ACKNOWLEDGMENT

STATE OF ALASKA	)
THIRD JUDICIAL DISTRICT	)ss. )

The foregoing instrument was acknowledged before me this \_\_\_\_\_day of \_\_\_\_\_, 2022, by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

Notary Public in and for Alaska My commission expires: \_\_\_\_\_

Page 12 of 13

# NOTARY ACKNOWLEDGMENT

) )ss.

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

The foregoing instrument was acknowledged before me this \_\_\_\_\_day of \_\_\_\_\_, 2022, by Melissa J. Martin, President, Anchor Point Food Pantry, an Alaska non-profit corporation, for and on behalf of the corporation.

Notary Public in and for Alaska My commission expires: \_\_\_\_\_

# NOTARY ACKNOWLEDGMENT

)ss.

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

The foregoing instrument was acknowledged before me this \_\_\_\_\_day of \_\_\_\_\_, 2022, by Chris Anne Syme, Secretary, Anchor Point Food Pantry, an Alaska non-profit corporation, for and on behalf of the corporation.

Notary Public in and for Alaska My commission expires: \_\_\_\_\_

Kenai Peninsula Borough, Alaska Real Property Lease – KPB/APFP Page 13 of 13

# NEGOTIATED SALE, LEASE OR EXCHANGE OF BOROUGH LAND KENAI PENINSULA BOROUGH LAND MANAGEMENT DIVISION

144 N. Binkley Street Soldotna, AK 99669-7599 Imweb@kpb.us Phone: 907-714-2205 Fax: 907-714-2378

A \$500.00 fee must be submitted with this application. The \$500.00 is not applied to the purchase price and is refunded only if the application is not found to be in the public's best interest.

This form is to be completed by individuals or organizations wishing to purchase, lease or exchange borough land pursuant to KPB 17.10.100 (C) or (I). The application is to be completed in full to the best of knowledge of the individual or authorized representative. If requested, proprietary and financial information of the applicants, that is so marked, will be kept confidential. The assembly must approve, by ordinance, any disposition of borough land. The application process generally takes between 90-180 days.

Attach separate sheets of paper if more space is needed for explanation. If a section *(or portion thereof)* is not applicable, mark with the abbreviation "N/A". Contact Kenai Peninsula Borough Land Management staff if you have any questions about the information requested on the application. Please type or print.

# **Applicant Information**

Name:			
Organization: Ancho	r Point Food Pantr	у	
Mailing Address: PO	Box 266, Anchor F	Point, AK 99556	
Phone: <u>907-299-8437</u>		apfp.266@gmail	.com
Other individuals(s) or organiz	ations(s) party to	this application	(add additional pages if needed):
Name:			
Organization:			
Mailing Address:			
Phone:	Email:		
Type of Organization (check or	ne):		
Individual	Sole Propriet	orship	General Partnership
X Non-Profit	Limited Liab	ility Company	Limited Partnership
Corporation	Other:		

Note: Please submit, as appropriate, the following items with this application:

- 1. Current Alaska Business License
- 2. Designation of Signatory Authority to Act for Organization or Individual
- Non-Profits IRS Tax Exemption Status

   <sup>¬</sup>XYes Please attach letter of determination
   <sup>¬</sup>No Please attach certificate, articles of incorporation, by-laws, or other appropriated documentation.

#### **Description of parcel(s) of interest** (add additional pages if needed):

Legal Description: <u>T53 R 15W SEC 4</u>	4 SEWARD MARIDIAN;
Tax Parcel ID: <u>16905071</u>	Recording District: Size/Acreage:3.5
This application is being made for the□Purchase□Exchange	
(If yes, terms will be discussed during the	financing for this purchase e negotiations) you believe the Borough should sell this land to

If the proposal is for other than fair market value, please state why it would be in the public's best interest to approve this proposal. Include all supporting facts & documents. As a lease, the Anchor Point Food Pantry and its planning committee (June 2021)

collaborated on plans to build a hall that will facilitate a revenue for the pantry, thus providing a

venue for general public use.

# Are there any existing improvements on this land? If yes please describe and provide photos if available.

None known

Attach a site	plan de	picting	the p	propose	ed use	of the	property.

Plan attached ⊠Yes □No

Has the applicant or affiliated entity previously purchased or leased Borough owned land or resources:

☑No □ Yes (If yes provide legal description; type of purchase/lease and its' current status)

# Has the applicant or affiliated entity ever filed a petition for bankruptcy, been adjudged bankruptor, or made an assignment for the benefit of a creditor?

 $\square$  No  $\square$  Yes (If yes please explain, including dates):

# Is the applicant or affiliated entity now in default on any obligation to, or subject to any unsatisfied judgment or liens?

 $\square$  No  $\square$  Yes (If yes, please explain):

Complete the following applicant qualification statement for each individual applicant or organization (*attach additional statements as necessary*):

# **APPLICANT QUALIFICATION STATEMENT**

Name:	Anchor Point Food Pantry
Address:	PO Box 266, Anchor Point, AK 99556

I hereby swear and affirm to the best of my knowledge:

- That I am eighteen years of age or older; and
- I am a citizen of the United States or a permanent resident who has filed a declaration of intention to become a citizen or a representative of a group, association or corporation which is authorized to conduct business under the laws of Alaska; and
- I am not delinquent on any deposit or payment obligation to the Kenai Peninsula Borough (KPB); and
- I am not currently in breach or default on any contract or lease involving land in which KPB has not acted to terminate the contract or lease or to initiate legal action.
- Unless agreed otherwise in writing and signed by the KPB mayor, the above named applicant agrees to provide a performance bond, general liability insurance, damage deposit, and pay for remote site inspection, if applicable.

I hereby certify that the information contained herein is true to the best of my knowledge and belief.

arti Signature of Applicant

March 19, 2022

Melissa J. Martin

Print Name

Kenai F Finc							
144 N. Binkley Street Soldotna, Alaska 99669-759 www.kpb.us		Phone: (907) 714-219 or: (907) 714-217 Fax: (907) 714-237	5				
Fill in all information requested. Sig	In and date, and submit wit	h bid or proposal.	For Official Use Only				
Reason for Certificate:	Food Pantry relocation	Food Pantry relocation For Department:					
Business Name:	Anchor Point Food Par	ntry					
Business Type:	Individual Corp	oration 🗌 Partnership	Other:				
Owner Name(s):							
Business Mailing Address:	PO Box 266, Anchor Po	oint, AK 99556-0266					
Business Telephone:	907-299-8437	Business Fax:					
Email:	apfp.266@gmail.com						
several areas of taxation.			Borough Code of Ordinances in the				
several areas of taxation.           REAL/PERSONAL/BUSINESS PRO	ACCT. NAME	TAX ACCOUNTS/ YEAR LAST PAID	STATUS (TO BE COMPLETED BY KPB)				
several areas of taxation.          REAL/PERSONAL/BUSINESS PRC         ACCT. NO.	PPERTY ACCOUNTS ACCT. NAME	TAX ACCOUNTS/ YEAR LAST PAID	/STATUS (TO BE COMPLETED BY KPB) BALANCE DUE				
Several areas of taxation.   REAL/PERSONAL/BUSINESS PRO ACCT. NO.   KPB Finance Department (signature)	PPERTY ACCOUNTS ACCT. NAME	TAX ACCOUNTS/ YEAR LAST PAID	/STATUS (TO BE COMPLETED BY KPB) BALANCE DUE				
Several areas of taxation.  REAL/PERSONAL/BUSINESS PRO ACCT. NO.  KPB Finance Department (signature SALES TAX ACCOUN	PPERTY ACCOUNTS ACCT. NAME	TAX ACCOUNTS/         YEAR LAST PAID	/STATUS (TO BE COMPLETED BY KPB) BALANCE DUE				
Several areas of taxation.  REAL/PERSONAL/BUSINESS PRO ACCT. NO.  KPB Finance Department (signature SALES TAX ACCOUN ACCT. NO.  KPB Sales Tax Division (signature re Melissa J. Ma CERTIFICATION: 1.	PFERTY ACCOUNTS ACCT. NAME  required)  acct. NAME  quired)  rtin	TAX ACCOUNTS/         YEAR LAST PAID         Date         Date	/STATUS (TO BE COMPLETED BY KPB) BALANCE DUE In Compliance Not in Complianc /STATUS (TO BE COMPLETED BY KPB) BALANCE DUE				

Resolution of the Anchor Point Food Pantry Board of Directors Regarding the application of a long-term property lease from the Kenai Peninsula Borough

Whereas the Board believes the mission of the Anchor Point Food Pantry is important to, valued by and needed by the Anchor Point and surrounding community; and

Whereas the Board believes the establishment of a permanent place for the Pantry is necessary to assure its long-term sustainable operation; and

Whereas the Board believes the establishment of a permanent place for the Pantry can be leveraged to further realize the long-term vision of the Anchor Point Food Pantry as a cornerstone community organization; and

Whereas the Anchor Point Food Pantry Board believes that the Kenai Peninsula Borough Property Tax Parcel ID: 16905071 (3.5 acres, Institutional Portion) is the best opportunity for the Pantry to establish a
Iong-term permanent place that will sustainably continue the Pantry's mission for the community and the opportunity to realize the long-term vision of the Pantry, having the community's best interest in mind.

Now, therefore, be it resolved that the Board of Directors of the Anchor Point Food Pantry hereby directs Melissa Martin, President, Executive Director, to prepare and apply for a land lease to the Kenai Peninsula Borough for the subject property; and furthermore, authorizes the president to enter into a lease agreement with the Kenai Peninsula Borough; and to sign for and perform any and all responsibilities in relation to such agreement. The Board of Directors further authorizes the president to undertake such planning and development preparation activities as is necessary to establish sustainable Pantry operations on said property.

Location: KPB Tax Parcel ID: 16905071 (3.5 acres, Institutional Portion)

Melissa J Martin, APFP President, Executive Director

Chris Syme, APFP Secretary Date: March 3, 2022

Alaska Business License # 2090225

# Alaska Department of Commerce, Community, and Economic Development

Division of Corporations, Business, and Professional Licensing PO Box 110806, Juneau, AK 99811-0806

This is to certify that

# Anchor Point Food Pantry

PO Box 266, 73358 School St., ANCHOR POINT, AK 99556-0266

owned by

Anchor Point Food Pantry

is licensed by the department to conduct business for the period

December 3, 2020 to December 31, 2022 for the following line(s) of business:

62 - Health Care and Social Assistance



This license shall not be taken as permission to do business in the state without having complied with the other requirements of the laws of the State or of the United States.

This license must be posted in a conspicuous place at the business location. It is not transferable or assignable.

Julie Anderson Commissioner

Anchor Point Food Pantry PO Box 266 73358 School St. ANCHOR POINT, AK 99556-0266 INTERNAL REVENUE SERVICE P. O. BOX 2508 CINCINNATI, OH 45201

#### DEC 2 2 2016

ANCHOR POINT FOOD PANTRY PO BOX 266 ANCHOR POINT, AK 99556-0266

46-1962921		
DLN:		
26053740003066		
Contact Person:		
CUSTOMER SERVICE	ID#	31954
Contact Telephone Number:		
(877) 829-5500		
Accounting Period Ending:		
October 31		
Public Charity Status:		
509(a)(2)		
Form 990/990-EZ/990-N Require	ed:	
Yes		
Effective Date of Exemption:		
December 01, 2016		
Contribution Deductibility:		
Yes		
Addendum Applies:		
Yes		

#### Dear Applicant:

We're pleased to tell you we determined you're except from federal income tax under Internal Revenue Code (IRC) Section 501(c)[3]. Donors can deduct contributions they make to you under IRC Section 170. You're also qualified to receive tax deductible bequests, devines, transfers or gifts under Section 2055, 2106, or 2522. This letter could help resolve questions on your exempt status. Please keep it for your records.

Organizations exempt under IRC Section 501(c)(3) are further classified as either public charities or private foundations. We determined you're a public charity under the IRC Section listed at the top of this letter.

If we indicated at the top of this letter that you're required to file Form 990/990-82/990-N, our records show you're required to file an annual information return (Form 990 or Form 990-E2) or electronic notice (Form 990-N, the e-Postcard). If you don't file a required return or notice for three consecutive years, your except satus will be automatically revoked.

If we indicated at the top of this letter that an addendum applies, the enclosed addendum is an integral part of this letter.

For important information about your responsibilities as a tax-exempt organization, go to wew, ims.gov/charities. Enter 4221-PC\* 4221-PC\* to the search bar to view Publication 4221-PC. Compliance Guide for 501(c) (3) Fublic Charities, which describes your recordReeping, reporting, and disclosure recuirements.

Letter 947

DEPARTMENT OF THE TREASURY

#### The Anchor Point Food Pantry Development Plan

Prepared for: The Anchor Point Food Pantry Prepared By: Steve Theno, PE; Retired

#### Introduction

The Anchor Point Food Pantry (APFP) is a non-profit (501c3 tax exempt) organization based in Anchor Point. The APFP is a community focused organization. The mission of the APFP is outreach and support for members of the community, working to spread awareness and make a difference in residents' lives. It does this through a number of programs anchored around its core food program. The APFP serves the rural areas of the lower Kenai Peninsula from Ninilchik south; including Happy Valley, Anchor Point, Nikolaevsk and some residents of Homer that are unable to make it to the Homer Pantry during their normal hours of operation.

The APFP has a broader vision to be a cornerstone organization the lower Kenai Peninsula community can depend on, serving the community's needs, and making a difference. To carry out its mission reliably and sustainably, the APFP needs a permanent facility supported with the appropriate infrastructure. To achieve its vision, the APFP needs a location within which growth can occur. The Kenai Peninsula Borough (KPB) property for which a lease application is being submitted by the APFP would provide a suitable location for the APFP to construct a permanent facility and the associated infrastructure to continue its mission and to leverage growth to achieve its vision.

#### <u>Purpose</u>

The purpose of the APFP Development Plan is to provide the framework with which to responsibly and sustainably plan, construct, manage and operate the necessary physical facilities and associated infrastructure that enable the mission of the APFP to be successfully performed.

The APFP Development Plan further establishes a broader overall Masterplan that guides the on going planning and development of additional physical facilities and expanded infrastructure on the site with the features and capabilities necessary to realize its broader vision of supporting local community needs and fostering a sense of community – for charity, for education (like teaching youth how to can and bake bread), and for fun.

The APFP Development Plan clearly establishes for the Borough, the community, the stakeholders, and supporters: the goals and objectives of the organization, the expectations for the development of the site and the strategies for sustainable management and operations. It forms the foundation of an open and transparent commitment to the community. And it provides the framework for dialogue with other community partners in maximizing community benefit.

#### Proposed Site

The Borough property which the APFP proposes to lease under this development plan is the Institutional portion of parcel 16905071. The property is part of the larger 16.21-acre parcel of previously unclassified Borough land, a portion of which has been developed as a solid waste transfer facility. This larger parcel is within the central area of the Anchor Point community. It is generally bounded by School

Street on the north, Birch Street on the west, Spinnaker Street on the south and private commercial property on the east. The southeast corner has an extension which provides a land corridor to the Old Sterling highway.

Earlier in 2021, through Borough action, the original parcel was subdivided to create a 3.52 acre parcel classified as Institutional and a 1.53 acre parcel classified as Residential. The larger balance of 9.81 acres, which includes the solid waste transfer station, was classified as Waste Handling. The remaining 1.35 acres establishes Right of Ways along the property boundaries bordering School, Birch and Spinnaker streets. The Residential parcel is a strip with a north-south alignment. It's west property boundary abuts the Right of Way established along Birch Street.

The property then which is proposed in this lease is the 3.52 acre Institutional parcel. It is nominally 500' by 300'; with the long axis aligned north-south. The northern property boundary abuts the Right of Way established along School Street and the southern boundary borders the Right of Way established along Spinnaker Street and its future alignment. The property abuts the Residential parcel on the west and the remaining Borough Waste Handling site on the east.

The property has no existing structures nor permanent improvements. It is generally level, with localized grade variations of several feet, although there is a general slope down to the east and south; with an overall elevation difference of approximately 8 feet. There is standing surface water on the Borough land just east of the subject parcel and this appears to be a natural area low point. Approximately one-half of the site is undisturbed, in its natural state. This is generally concentrated along the west and north portions of the site. The surface here generally has a natural vegetative cover with dispersed low density timber stands.

While there are no existing structures or permanent improvements on the property, there is a fairly large segment of the site, generally in the east and south that has been previously stripped of vegetation and roughly graded. There are several pioneer trails and paths into and out of this area; that appear to be used periodically by 4-wheelers, off road vehicles and perhaps other vehicles. Within the rough graded area is there is a shallow depression that looks like an old open pit, perhaps used in the past as a borrow source.

It has been reported that portions of the site had served as a highway maintenance staging area in the past by the State of Alaska. It is possible the rough graded area and open pit are remnants of past State highway maintenance activities. There has been speculation that there may be some localized chemical contamination resulting from the State activities. The most likely forms of contamination might be brines, salts and chemicals used in highway deicing; oils and lubricants, asphalt mixtures and road paints. However, no contamination has been identified and the Borough indicates they have no evidence to suspect contamination nor any justification to conduct a Phase I Environmental Assessment at this time.

Public utilities are available in close proximity to the site. Homer Electric Association (HEA) provides electric utility service to the area. HEA has an overhead 120/240V 1Ph power line running east-west in an alignment just north of School St. Electrical service to the site may be extended from this line. Higher capacity 3Ph power would only be available to this location if extended from the Sterling Highway. Anchor Point Safe Water Company provides local water service. Anchor Point Safe Water Company has a 6" transmission main running north-south in an alignment just west of Birch Street. Water service to the site may be extended from this line. It will require a branch extension of the 6" transmission main from

the vicinity of the School Street and Birch Street intersection east in an alignment along School Street to a convenient location from which to extend a water service into the site. There is no public waste water disposal system nor storm drain system in the vicinity of the site.

Vehicular access to the site may be approached from either Spinnaker St or from School Street. School Street generally functions as an east-west arterial roadway for this area, with a connection to the Sterling Highway. It would offer the most appropriate approach.

The proposed site offers very good opportunities for development. The site has sufficient area to construct the core facilities proposed for the Anchor Point Food Pantry. There is sufficient space to optimize vehicular and pedestrian circulation, flexibility in siting the facilities to be constructed, space to accommodate on-site waste water disposal systems and nice opportunities to create natural buffers between the facilities and activities on site and adjacent land parcels and public ways. Furthermore, with prudent masterplanning efforts, the site provides the opportunity to explore the development of additional community facilities as envisioned by the APFP.

#### Development Strategy

The APFP will develop the proposed site in a series of strategic phases. Each phase will achieve an increasing level of service and benefit the APFP provides the local community. Each phase builds on the previous. The development strategy and the development phases will be focused on enabling the APFP to deliver its core mission and to establish the foundation and infrastructure that will enable realization of the longer-term vision.

The phased development strategy is structured such that the APFP can begin to deliver services early in its occupancy and to maintain those services without major interruption throughout all development phases. Furthermore, the phased development strategy recognizes the need to accommodate fund raising and financing efforts, to develop, implement and optimize sustainable business plans and to develop and cultivate necessary administrative, operations and maintenance expertise and resources.

The development strategy is founded on the following key precepts:

- 1. All facilities and site improvements will be designed to reflect the culture and values of the community, to be inviting, and something the community will be proud of.
- 2. The APFP will be a good neighbor, mindful of the local setting and surroundings. The new facilities, site improvements and operations will be developed to work well with the neighborhood and to mitigate any local concerns.
- 3. The APFP will be a good steward of the land, cognizant of the Borough's ownership and respectful of the natural environment.
- 4. All facilities and site improvements will be designed and constructed in compliance with Borough and State of Alaska codes and standards, as applicable.
- 5. The new facilities will be designed to be economical to construct and operate. The new facilities will be designed to meet and exceed current energy efficiency standards and incorporate renewable energy and sustainability features to the extent feasible. The LEED (Leadership in Energy and Environmental Design) program will be used as a guideline.

- 6. The new facilities and site will be well maintained and responsibly operated. A dedicated operations and maintenance program will be established to assure a fully functional and sustainable development is achieved and maintained throughout its life.
- 7. The site and facilities will be developed to maximize their ability to generate a revenue for the Pantry, when providing a venue for general public use (meeting space, group dining/kitchen, etc).
- 8. The site and facilities will be developed to maximize the ability to leverage the infrastructure to maximum benefit in supporting future site amenities and facilities developed by or with other community partners.

The guiding philosophy of the development strategy is the creation of a permanent, sustainable home for the APFP and to create this home in a way that is beneficial to the community, valued by the community, accepted by the community, and can grow in what it can deliver for the community.

#### Site Development Masterplan

A Masterplan has been generated to visualize, optimize and guide the site development. The Masterplan graphically illustrates how the site will be developed through a series of logical, sequential phases. It presents a vision of the preferred arrangement of the site.

The Masterplan may be found in the Appendices. Key features of the Masterplan include:

- 1. Primary access into and out of the site is via School Street. The primary access facilitates both vehicular and pedestrian access. On site pedestrian pathways can link to future public pathways should they be developed along School Street.
  - a. Vehicular access points from/to School Street are sited well east of the School Birch intersection to minimize any potential congestion.
- 2. A natural buffer is maintained between the facilities and activities on the site and School Street. The buffer takes advantage of the Right of Way property established by the Borough. A natural buffer between the site and Spinnaker Street along the south side of the site is maintained by limiting any development in this location. A privacy fence may be considered along the western boundary of the site, providing further separation between the site and adjacent Residential property. Selective natural vegetation and timber is left in place to further buffer and screen the property boundary.
- 3. Constructed facilitates are generally clustered in the northwest quadrant of the site. This offers good drainage opportunities, and the vegetation and timber stands provide opportunities for selective landscaping to create a pleasant setting.
- 4. Parking and vehicular circulation is generally distributed along the eastern half of the site. This provides the opportunity to take advantage of the existing clearing and grading that exists and the opportunity to dress it up. Discrete parking areas are arranged to work with the slopes, grade changes and contours that exist in this area of the site. On-site circulation generally attempts to separate vehicular movement from pedestrian movement to and from the facilities.
- 5. Delivery truck access makes use of the primary vehicular access points to/from School St, but maneuvering is otherwise separated from public circulation as much as possible.
- 6. The playground is strategically positioned to provide ready viewing, monitoring and pedestrian movement to/from the Pantry facility, yet be convenient to vehicle parking. The playground is separated from primary vehicular circulation traffic ways as best possible.

#### 7. Utilities

- a. Electric utility will be extended from the HEA overhead line on the north side of School Street. It is anticipated the road crossing will be an aerial service line, transitioning to an underground service line through the Borough Right of Way to the facilities on the site. Sizing of the service line for current and future needs will be coordinated with the serving utility.
- b. Water service shall include a 6" branch main line extension from the existing Anchor Point Safe Water Company's 6" transmission main located along the west side of Birch Street. The branch main line extension shall extend east along the south side of School Street to a suitable location for a fire hydrant. A service line shall be extended into the site from this 6" branch main line extension. A 4 or 6" service is anticipated to accommodate future on site fire hydrants and fire sprinkler systems in the constructed facilities.
- c. Wastewater disposal will be accommodated on site. Either a conventional septic tank and leach field will be employed, or a raised bed leach field with a combination septic tank/lift station arrangement, as dictated by the soil's conditions. The leach field is sited towards the southern and eastern region of the site; areas generally set aside to be maintained as a natural buffer to adjacent properties.
- 8. The site masterplan is arranged to allow continued development along the western boundary, progressing southward from the initial facilities. Such development could be readily accommodated by the existing parking, vehicular circulation, and pedestrian pathways. There is also space available to continue to expand the parking configuration in a compatible way, to the south in parallel with facilities expansion. Similarly, utility services are sized and arranged to expand southward to support new development. And finally, expanding facilities south in the proposed manner allows the facilities to be conveniently linked to leverage the assets each possesses, but also the opportunity to create unique identities for each component.

#### Near Term Development Phase

Near term development would occur years 2022 and 2023. Development activities would begin immediately following award of the lease in the spring of 2022. Initial activities would include finalizing the near-term scope of work and site layout, developing construction documents for work to be accomplished on site, engaging contractors to perform the work, and coordination with local utilities.

The primary objective for development work in 2022 would be to put in place the necessary infrastructure, facilities and improvements sufficient to establish interim operations. It would provide an initial functional base from which the Anchor Point Food Pantry could deliver its baseline food assistance program. Major work tasks would include:

- 1. Clear and grub site clearing and grubbing would be accomplished as necessary to support the initial limits of construction
- 2. Construct gravel pad and access roads a gravel pad would be constructed sufficient to accommodate vehicular circulation, parking and the placement of facilities on the site. The primary vehicular access roads to/from School Street would be constructed
- 3. Electric service initial site electrical service from HEA would be installed
- 4. Gas service the primary gas service from Enstar would be installed

- 5. Relocate and set structures the existing structures owned by the APFP would be relocated from their current sites and set in place on the new site. The structures include a cold storage shed, a semi-trailer van previously repurposed as a warm storage facility and a 16' by 32' newly constructed general-purpose building.
- 6. Upgrade and energize structures the relocated structures would be upgraded to meet applicable codes and standards and connected to gas and electric utility services
- 7. Site lighting initial site lighting would be installed for year around safe and secure operations

Work for 2022 would be complete by the fall of 2022 and the APFP would be capable of sustainable year around operations from the site.

The primary objective for continued development work under this near-term phase in 2023 would be to add the additional facilities space, infrastructure and improvements necessary to incorporate a full service kitchen into operations on the site. This would provide the APFP the capability of expanding their food program to include warm meal service prepared on site. Major work tasks would include:

- 1. Water service the transmission line extension from the Anchor Point Safe Water Company main and the primary water service into the site would be installed and extended initially to serve the expanded general purpose building
- 2. Waste water disposal system a site waste water disposal system would be constructed and waste service extended to initially serve the general purpose building
- 3. Expand 16x32 general purpose building to 36x32 the recently constructed 16' by 32' building would be expanded to 36' by 32'
- 4. Complete interior of 36x32 building work to complete the 36' x 32' building, including all interior finishes, fixtures, equipment and mechanical and electrical systems would be accomplished
- 5. Install commercial grade kitchen in 36x32 building a fully certified commercial grade kitchen would be installed and made ready for operation

At the completion of the near-term development phase the APFP would be delivering its core food service program year-round from the site and able to do so indefinitely. In addition, all baseline utilities infrastructure would be in place to support the next development phases.

#### Mid Term Development Phase

Mid term development is targeted to occur years 2024 and 2025. The overall objective for this phase is the construction of the permanent pantry facility and integrating it with the facilities established under the near-term phase.

In 2024, the shell for the new permanent pantry would be constructed. Major work tasks include:

- 1. Expand gravel pad the existing gravel pad would be expanded to accommodate the permanent pantry facility and additional vehicular circulation and parking
- Construct pantry shell the permanent pantry facility shell would be constructed; linked to the 36' by 32' building. The permanent pantry would be configured to facilitate expansion in followon phases
- 3. Temporary heat and electric temporary heat and electrical systems would be installed to maintain appropriate interim conditions within the pantry interior

Rough in for building subs systems (mechanical, heating, plumbing, fire protection and electrical) would be accomplished in coordination with the shell construction to readily accommodate full pantry buildout the following season. Temporary heating and electrical systems would be provided to preserve the facility and to enable selective beneficial use until full buildout is completed.

Completion of the permanent pantry and its integration with the other site facilities would be targeted for 2025. Major work tasks include:

- 1. Complete pantry interior the pantry would be fully built-out
- 2. Relocate and repurpose structures the 36' by 32' building with the commercial kitchen remains permanently linked with the pantry and becomes an integral part. Additional kitchen space will be developed within the pantry to increase food service capabilities. The balance of the 36' by 32' will be renovated and repurposed for other pantry functions. The semi-trailer warm storage van and the cold storage shed will be removed; possibly repositioned for other uses on site.
- 3. Finish site work final work to finish out the site improvements will be completed. This will include final configuration of on-site vehicular circulation and pedestrian pathways, additional site lighting, various site appurtenances, final grading and drainage and final landscaping.

At the completion of the mid term development phase the permanent pantry facility would be in its complete and final configuration. The pantry would be capable of delivering its core mission; the full food program and warm meal service with sit down dining, as well as hosting special dinners and other events and programs as the opportunities arise. The APFP would also be able to support some community events and programs with the buildings and infrastructure in place.

#### Long Term Development Phase

The long-term development phase is envisioned to occur through years 2026-2030. The objective of this development phase is the construction of multi-purpose assembly space along with additional support spaces that would be compatible with and an extension of the permanent pantry facility. The objective of the expanded space is to provide the capability to host a variety of general public functions and activities. It would be undertaken with the involvement and support of the community and by or with other community partners. The following spaces would be included in the expansion:

- 1. Multi-purpose assembly space with a dedicated stage and/or exercise room.
- 2. Public restrooms and shower facilities
- 3. Multipurpose storage space
- 4. Office space for the APFP and partner organizations and possibly additional rental office space to provide some supporting revenue

The expanded space will likely take the form of a physical expansion of the base pantry facility, but could be a detached structure, strategically linked to the pantry facility. In addition to the expanded facility space, the long-term development phase would include an expansion of the on site parking areas, able to accommodate the traffic flow associated with the expanded space capacity, expansion of utility capacities to accommodate the increased load and expansion of the on-site waste water disposal system.

The construction of the expanded facilities in this long-term development phase would likely occur over multiple years. The multiple year development would strategically fit with the need for strategic planning with community partners, fund raising and financing efforts, business planing and the expansion of administrative, operations and maintenance capabilities. As with the mid term development phase strategies, it is likely an expansion of the building shell would be constructed one season, followed by build-out the following season. In this way, development would progress in step increments, and some level of selective functionality would be available after each step.

At the completion of the long-term development the facilities and infrastructure available on the developed site would enable the APFP to realize its full vision, to be a cornerstone organization the lower Kenai Peninsula community can depend on, serving the community's needs, and making a difference. The assets complete on site would be able to support and host a variety of community and general public functions and activities including sit-down dinners, trade shows, talent shows, musical events, etc.

#### Future Development

The Anchor Point Community has expressed aspirations for additional community assets including a community greenhouse, a fitness facility, and a community pool. There may be other assets the community would value and would make good use of. The Anchor Point Food Pantry, in line with its vision, has an interest in leveraging the infrastructure and facilities that results from its development activities to facilitate and host such other community opportunities. The site lends itself to hosting other facilities. The timing and nature of any future development would be based on careful planning and appropriate feasibility analysis. The Anchor Point Food Pantry would anticipate working closely with the Community and interested partner entities and organizations to realize such development.

#### **Description of Proposed Facilities**

Several buildings and site improvements will be constructed during the Near-, Mid-, and Long-Term Development Phases.

For interim operations during the Near-Term Phase, legacy structures owned by the APFP will be relocated to the site, upgraded and placed into operation. These facilities will enable the APFP to begin to deliver their core mission services. These legacy facilities include:

- A cold storage shed, nominal 8x12. This facility will be provided with electrical service for general purpose power and lighting but will remain unheated and serve as dry goods and nonperishables cold storage.
- 2. A converted semi-van trailer, nominal 8x40. This facility has been repurposed in the past to serve as a storage and workspace. It has a basic electrical system and heating system. This facility will be provided with electrical service and gas service. It will serve as shelf stable dry goods warm storage.
- 3. A recently constructed 16x32 wood framed single-story general-purpose building. This facility will be expanded to 32x36 and finished on the interior. It will be complete with electrical, mechanical and plumbing systems. It will be provided with electrical, gas, water and wastewater services. It will serve as a receiving hall to distribute food packages and takeout warm meal

service. It will include a commercial grade kitchen and related support spaces. It is planned to contain a single unisex handicap toilet.

During the Mid Term Development Phase, the permanent pantry facility will be constructed. This will be a nominal 50x80, 4000 square foot single story building. It will be of wood frame or light steel construction with sloping roof and a nominal height to underside of roof structure of 16-18'. It will have a durable low maintenance exterior siding and finish, with appropriate treatment to create a quality appearance, compatible with the surrounding environment, expressive of its function and welcoming in nature.

The permanent pantry facility will house a number of spaces and functions. It will be linked with and work in conjunction with the 36' by 32' building completed in the near-term phase. A preliminary Program of Requirements defining the spaces, functions, sizes, and characteristics may be found in the Appendices. Key spaces include a Dining Hall for sit down meals; commercial grade kitchen; dry goods, perishables and frozen foods storage; public restrooms (ADA compliant); a main work bay for receiving and processing bulk food products and preparing food distribution packages; and related support spaces.

Once the permanent pantry facility is complete and integrated with the 36' by 32' building, the two remaining legacy structures will be removed or relocated and repurposed.

In the Long-Term Development Phase, should the community favor and support it, the larger companion facility to the permanent pantry will be constructed. This facility will be nominally 6000 -7000 square feet. It will be compatible in scale to the permanent pantry and of similar construction, character and quality.

If brought to completion, this facility will house a large multi-use assembly space with a stage and/or exercise room; public restrooms and showers (ADA compliant), and a number of flexible office and storage spaces. This facility may be an expansion of the permanent pantry, or a detached but linked facility. It will present a complementary yet independent look from the permanent pantry to differentiate its function and access.

In addition to the facilities, various site improvements will be constructed. The most visually apparent will be pedestrian and vehicular driveways and pathways; parking areas; site lighting and a playground. All will be easily identifiable, clearly marked and arranged for safety and to manage movement on site.

#### **Development Standards**

The new permanent facilities developed on site and the associated site improvements will be accomplished in accordance with applicable codes and standards, of commercial/institutional quality and designed for a sustainable long-term life.

Specific codes, standards, procedures and best practices that will guide the development include:

- 1. All of the Pantry facilities will be classified non-residential
- 2. The State will be the controlling entity; there has been no deferral of building code standards to local governments in this location.

- 3. The following codes shall apply in accordance with State requirements and as amended by the State
  - a. IBC International Building Code
  - b. IFC International Fire Code
  - c. IMC International Mechanical Code
  - d. NEC National Electrical Code
  - e. UPC Uniform Plumbing Code
  - f. ADA Americans with Disability Act
  - g. AFC Alaska Food Code
- 4. Plans and specifications shall be prepared by licensed architects and engineers in accordance with State requirements.
- 5. Plan review will be accomplished by The State Department of Public Safety and the Authority Having Jurisdiction (AHJ) will be the State Fire Marshall.
- 6. The State Department of Environmental Conservation administers water and wastewater standards. DEC performs plan reviews and issues construction and operating permits for water supply systems and wastewater disposal systems. The water and wastewater systems shall be designed and constructed in accordance with DEC requirements.
- 7. In addition, the Anchor Point Safe Water Company has adopted water utility specific standards, modeled after the City of Soldotna Department of Public Works Standards. These Standards shall be followed in the design and construction of the branch water main and site water service.
- The Department of Environmental Conservation administers Food Safety standards. DEC performs plan reviews and issues construction and operating permits for food handling facilities. The Pantry commercial kitchen shall be designed, constructed and certified in accordance with DEC requirements.
- 9. Enstar Natural Gas Company requires compliance with utility specific requirements and standards and shall be complied with.
- 10. Homer Electric Association requires compliance with utility specific requirements and standards and shall be complied with.

In addition, as stated previously under the Development Strategy, new facilities will be developed with respect to the following strategic guidelines:

- 1. All facilities and site improvements will be designed to reflect the culture and values of the community, to be inviting, and something the community will be proud of.
- 2. The APFP will be a good neighbor, mindful of the local setting and surroundings. The new facilities, site improvements and operations will be developed to work well with the neighborhood and to mitigate any local concerns.
- 3. The APFP will be a good steward of the land, cognizant of the Borough's ownership and respectful of the natural environment.
- 4. The new facilities will be designed to be economical to construct and operate. The new facilities will be designed to meet and exceed current energy efficiency standards and incorporate renewable energy and sustainability features to the extent feasible. The LEED (Leadership in Energy and Environmental Design) program will be used as a guideline.

#### Facilities Operations and Maintenance

Operations and maintenance costs will ultimately be a major component of the overall development's life cycle cost. A successful Operations and Maintenance program will help ensure facilities remain cost effective, fully functional, reliable and sustainable throughout their life.

As each phase of development is completed, detailed operations and maintenance data and documents will be prepared to support operations and maintenance activities. Training will be arranged for the APFP staff who will take responsibility for and lend support for the facilities on-going operations and maintenance. A robust proactive operations and maintenance program will be established and will become a core, budgeted component of the APFP operating plan.

#### Management, Administration and Operations

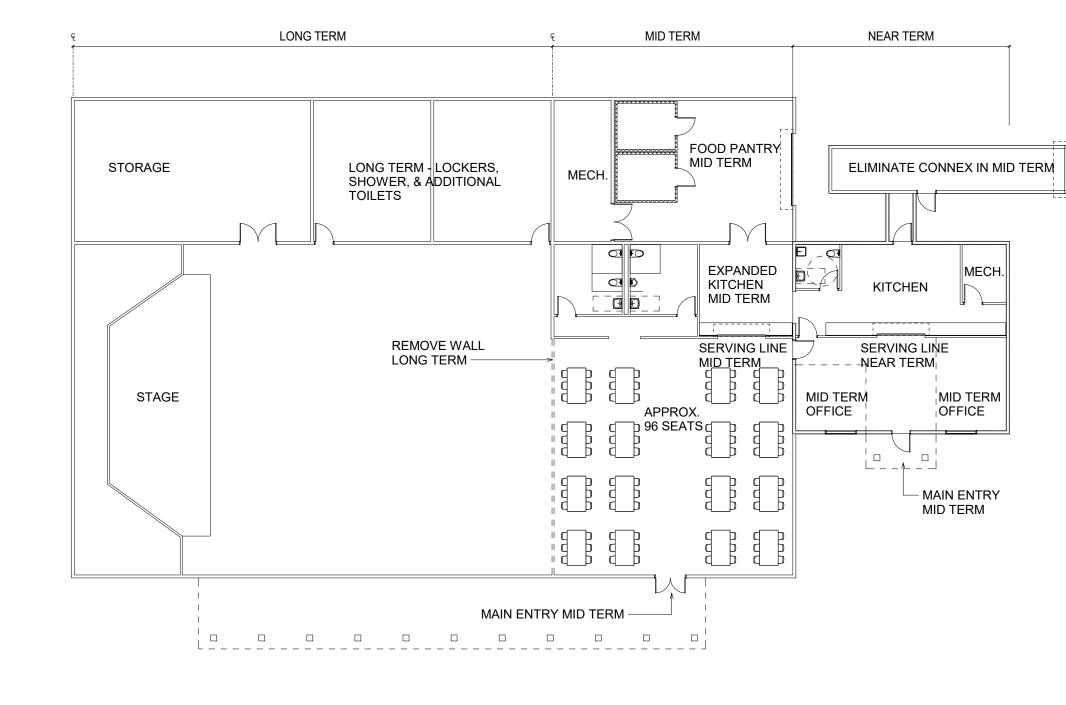
The site and facilities will be managed, administered and operated by the APFP organization. Ultimately, the APFP Board of Directors hold the authority and responsibility. Initially, management and operations will mirror that currently performed by the APFP; it will simply be a new location for what has been a successful operation with a strong track record. The organization's all volunteer management and staff will carry on in the roles and responsibilities they have reliably and successfully accomplished for many years.

As new facilities are developed and activities grow, the APFP will expand the volunteer staff support and put in place the administrative tools to continue to ensure stable, efficient and responsive operations. A dedicated site manager position will be established and staffed, providing single point of contact, oversight and management. Possibly a full-time site manager may be considered, with suitable onsite accommodations integrated with the pantry facility.

The APFP anticipates building a team consisting of part-time paid staff and a network of volunteers, hired contractors, service personnel and on call community resources to assure a reliable, responsive and sustainable operations is achieved.

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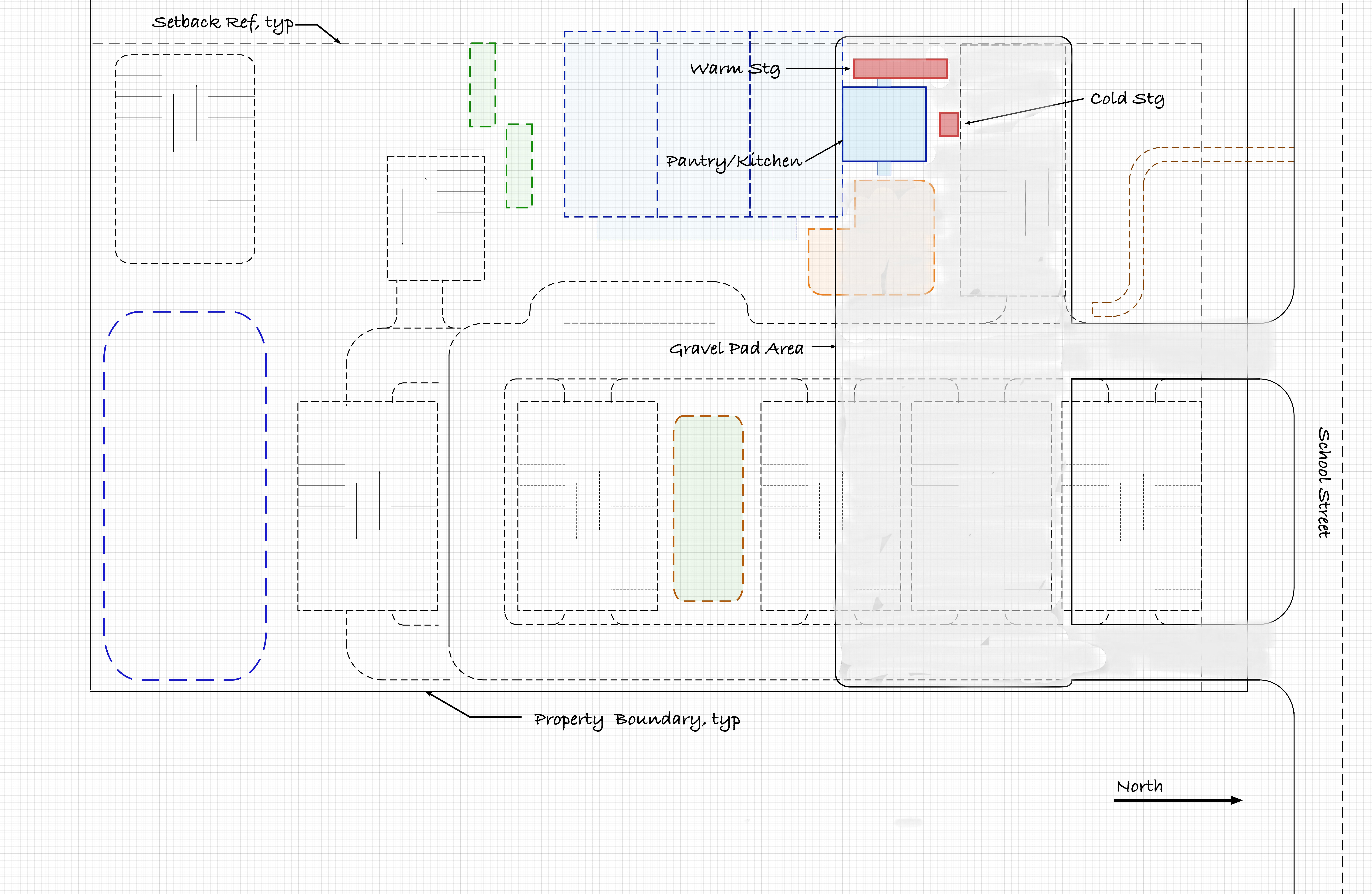
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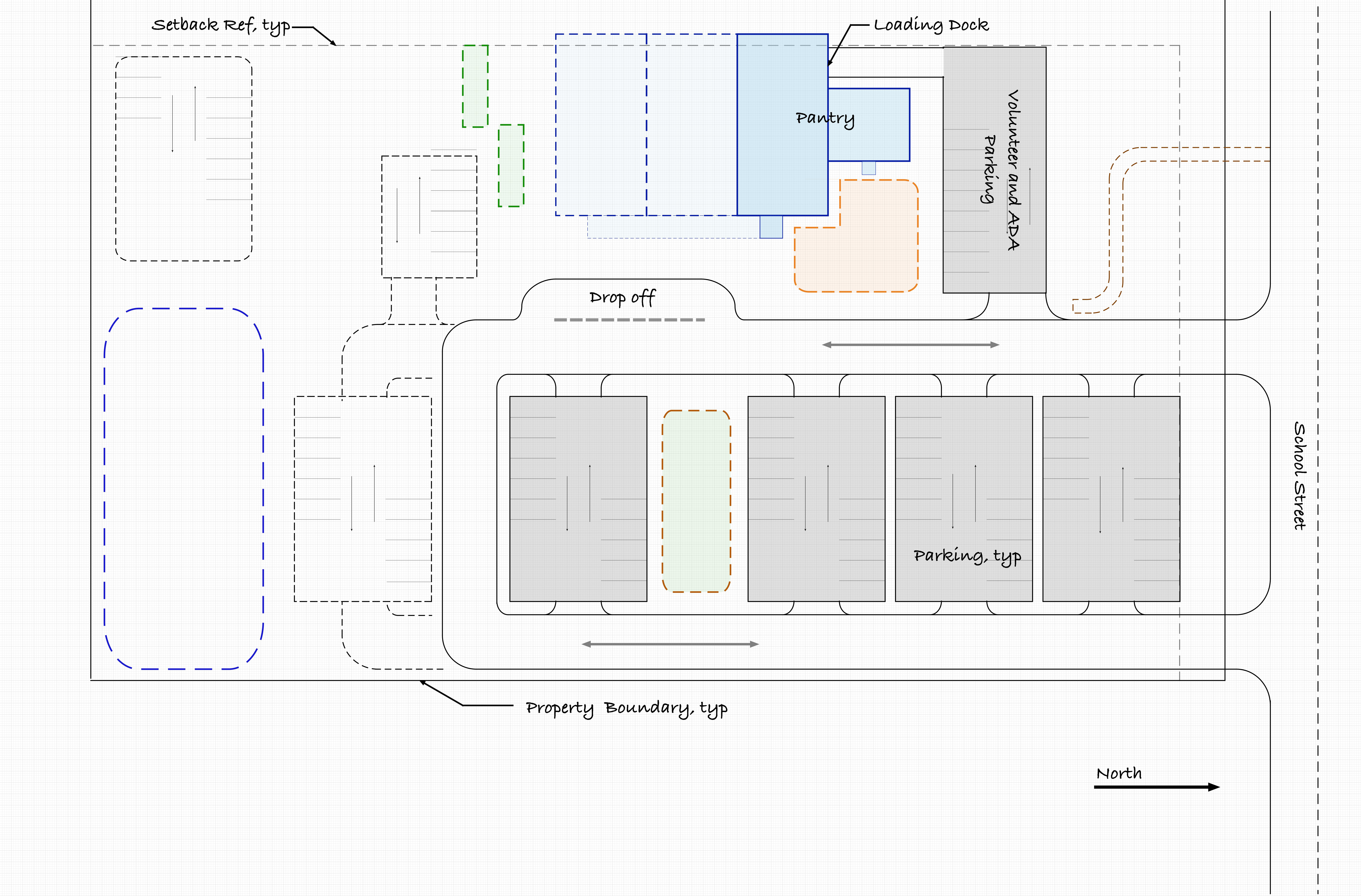
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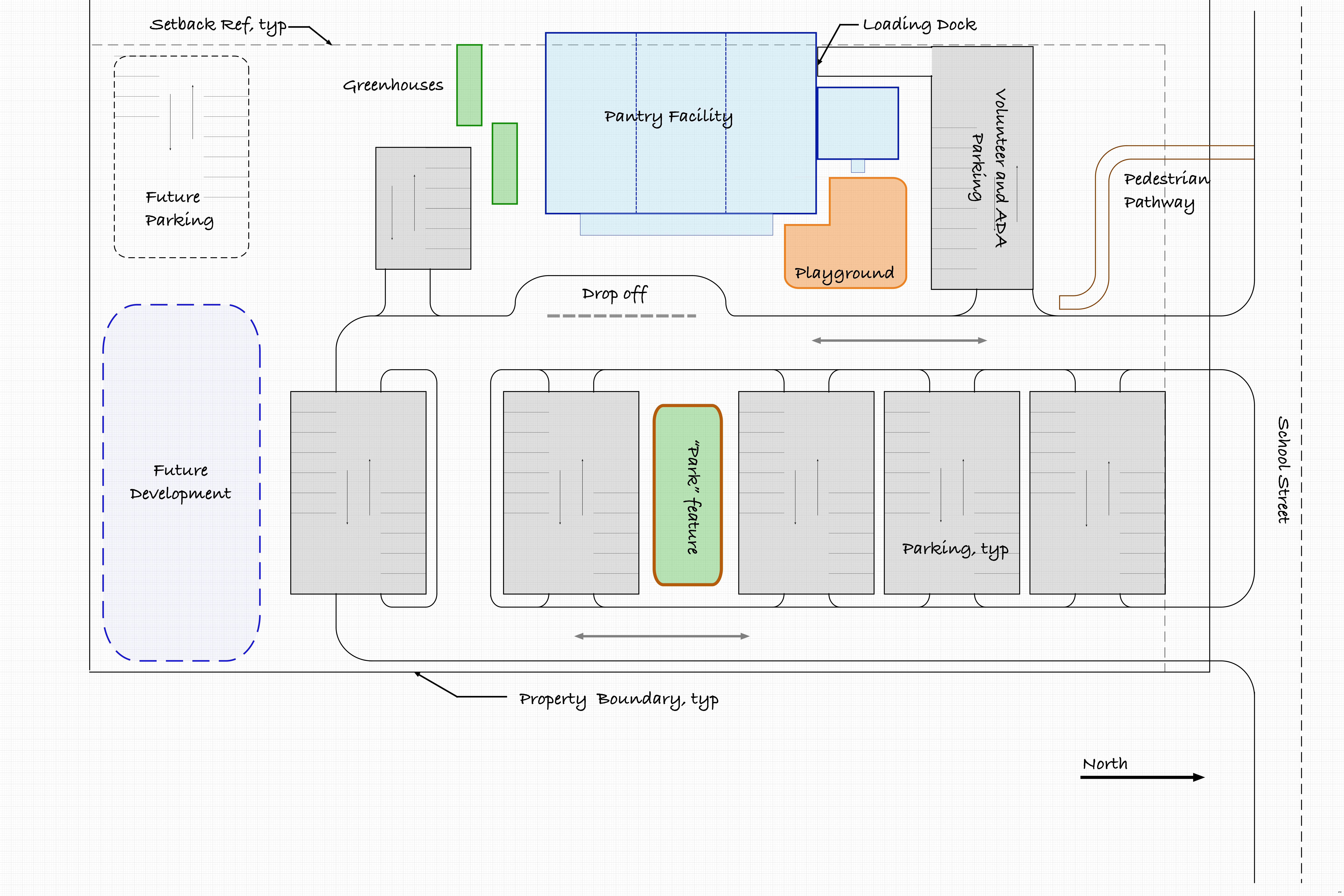
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#### The Anchor Point Food Pantry Story

The Anchor Point Food Pantry is a local community non-profit volunteer organization based in Anchor Point. The Pantry serves the rural areas of the lower Kenai Peninsula from Ninilchik south; including Happy Valley, Anchor Point, Nikolaevsk and some residents of Homer that are unable to make it to the Homer Pantry during their normal hours of operation. The Pantry was established in 2006 and continues today with its mission of outreach and support for members of the community, working to spread awareness and make a difference in residents' lives.

"We are a food pantry with a mission to serve the hungry with empathy, respect and honesty. To be effective, we believe we must exercise the attitude of kindness and cheerfulness, not that of duty."- mission statement. The core program the organization offers is that of a food pantry, providing weekly distribution of shelf stable food products and a warm meal to those experiencing hunger and food insecurity. In addition to the core food program, the Anchor Point Food Pantry currently supports the community with a number of special programs as well;

- Salvation Army Commodities program
- Holiday boxes and dinners
- Summer produce
- Children's Kids Day
- Home deliveries
- Homeless outreach and Cheeky Moose vouchers

The Anchor point Food Pantry has been registered as a business in the state of Alaska since 2012 and became a 501(c)(3) organization in 2016. It is classified by the Internal Revenue Service as a tax-exempt nonprofit organization. The Pantry is governed by a diverse Board of Directors; whose members include Alaska Natives, a Veteran, Seniors and Disabled. Presently all seven members, along with the President are women. The Pantry is a volunteer organization and is currently supported by 22 volunteers, many of whom are regularly engaged. And historically, the Pantry has been, and continues to be, supported by a broad spectrum of donors and supporting organizations within the community. They include the Kenai Peninsula Food Bank in Soldotna, the Homer Pantry, the Homer Foundation, 100 Women Who Care, the Rasmuson Foundation, Hillcorp, a number of local businesses and a host of individual contributors. Since its founding in 2006, the Pantry has seen an ever increasing demand for its core food program. After a brief period operating from founder and social worker Donna Silsbee-Dennis's home it was clear the Pantry needed more space. The Church of the Nazarene in Anchor Point agreed to support the Pantry and store food donations. The pantry worked with the Church of the Nazarene until 2012, by which time it had grown to need a larger facility. The Pantry was able to find new space with the Great Land Worship Center. The church provided a room for food storage, space for sit down meals and full kitchen facilities, all within their recently renovated fellowship hall. The Pantry operated from the Great Land Worship Center until 2020, when once again, it had outgrown the available space; spurred by the Covid 19 pandemic conditions. Since that time the Pantry has strived to maintain its much needed programs, operating from temporary facilities and sites.

It became clear the Pantry needed a permanent place, a home. Given the historic need, the growing demand and the challenge of securing suitable space, the Pantry began the search for a permanent solution. The Pantry was looking for a home that would allow them to continue to help meet the community's needs. And while the Pantry was founded in response to a recognized need to address food insecurity, it goes beyond that. As stated by President Martin, "To feed the hungry, yes, but not to let it end there.". And as Past-President Teece Scovell observed at the time, "The community is beginning to come together, and we're acting like a cohesive unit. We're becoming something that people can depend upon, which is what we want. We're there to help make a difference, and to serve the community.". Through outreach and dialogue with members of the community, the Pantry has recognized there is a need, a desire and a demand for not only the valued food program, but for a number of additional programs along with the infrastructure to facilitate those programs. The expressed needs include:

- Community accessible greenhouses.
- A community playground where the parents can bring their kids and feel their kids are safe.
- A space homeschoolers may use for their academic and gym activities.
- A venue for community garage sales and perhaps a place to shop for secondhand furniture and appliances.

After much consideration, the Anchor Point Food Pantry believes the Borough land now available for lease offers the best opportunity. It best enables the Pantry to continue its important mission, the core food program, for the community. It also allows the Pantry the ability to facilitate additional programs valued by the community; its broader vision; to make a difference and to serve the community.

To summarize, the Anchor Point Food Pantry needs the Borough land for the following reasons;

- The Pantry has a mission that provides a much needed service in the community. It has a broader vision to facilitate a host of additional programs the community has expressed a strong need for.
- To reliably and sustainably carry out its mission, the Pantry needs a facility with the appropriate infrastructure. To achieve its vision, the Pantry needs a location within which growth can occur.
- The 3.5 acre property made available for lease by the Kenai Peninsula Borough would provide a suitable location for the Pantry to construct a permanent facility and the associated infrastructure to continue its mission and to leverage growth to achieve its vision in support of the community.
- There are no suitable facilities available in Anchor Point for long term lease. While other commercial property may be available, the lease with the Borough offers a significant financial advantage.
- The Borough property is centrally located within the community and offers ready access to community users. Adjacent vehicular traffic ways are well developed and utility services are readily available. It is an ideal location.

And The Anchor Point Food Pantry believes it would be a good choice by the Borough to lease the subject land parcel because;

- The Pantry provides a much needed service in the community, and to continue to do so sustainably, it needs a suitable site for a permanent facility. This property provides that key piece.
- The Pantry, once developed, provides a much needed venue for other general public functions and activities (meeting space, community dining/kitchen, etc).
- The Pantry facility and associated infrastructure, can help leverage additional development with community support, to meet a host of additional needs expressed by the community (community center, event space, activity space, community greenhouse, playground, etc).
- The Pantry has the demonstrated experience and track record of having the ability to organize, fund, manage and operate facilities that support community activities and deliver community services.
- The Pantry has long standing relationships with other organizations and community groups and the ability to partner with them for the benefit of the community.
- The Pantry will be good neighbor and good steward of the land.
- The Pantry's mission and vision are solely to serve the community, to make a difference.

The Anchor Point Food Pantry sees this as a win-win opportunity. With a lease made available by the Borough, the Pantry can sustainably deliver its mission and aspire to realize its vision; delivering for the community much valued services, facilities and opportunities. Ultimately the community will benefit from the development the Pantry has planned. "Our plan would be perfect for the expressed needs of the community. The pantry and community desire a greenhouse. We plan on having greenhouses. The community needs a place to assist them with keeping the kids busy. We plan on having a playground and children's activities. The homeschoolers are interested in utilizing such a place for some of their programs. The community needs a place to buy secondhand furniture and appliances, which we can support. And the community needs a space for events larger than what exists now. We will have the space available to lease for private events. The plan is to have it available for community events requesting a minimal fee to cover costs." Melissa Martin; President

### The Anchor Point Food Pantry business plan for the KPB (leased) land.

Historically the Pantry has operated by using a traditional funding model for non-profit charitable organizations. We have relied on grants and donations from a diverse group of contributors including foundations, corporations, businesses, and individuals. And we have pursued government support.

We have traditionally supplemented the grants and donations with fund raising efforts including raffles, yard sales, community events, etc. And of course, we have relied heavily on volunteer support, since the Pantry is an all-volunteer organization.

From time to time we have received in-kind support from local businesses ranging from surplus fish and produce donations from local entrepreneurs for distribution, to some construction and maintenance work by local contractors.

Over the years of operation of the Pantry, the budget, and associated funding has grown from under \$10,000 to over \$50,000 a year, increasing steadily over the years.

More specifically, our business plan will be a continuation of what we are already doing - FY 2021-22

- 1. **Asking the experts** the Foraker Group; Greg Meyer of Kenai Peninsula Food Bank (30 years experience); Mike Miller of Homer Foundation (25 yrs.); Food Bank of Alaska; The Foraker Group; Rasmuson; our Laurie Rudy, treas., grant writer of 25 yrs.; Steve Theno, retired engineer (building plans; quality advice and volunteered service)
- 2. Grant writing with expert guidance (We acquired \$39,000 in 2021)
- 3. Seeking Corporate funders with expert guidance (\$3,500 for the holidays in 2021)
- 4. **Fundraising plans**: 2 mail campaigns; Line Dance at Chapman; Garage sales; Raffle; Pick.Click.Give; Online fundraisers. (last year we received \$2100 from the local community. The fundraiser was put on by a local business.)
- 5. **Donors**: (We acquired \$22,000 in 2021)

This year we have already started grant writing. We are hindered on who and how much we can ask because we don't have land.

We are having meetings with the food coalition, legislators, and the Foraker Group to network, to make our situation known, and to gather ideas and suggestions.

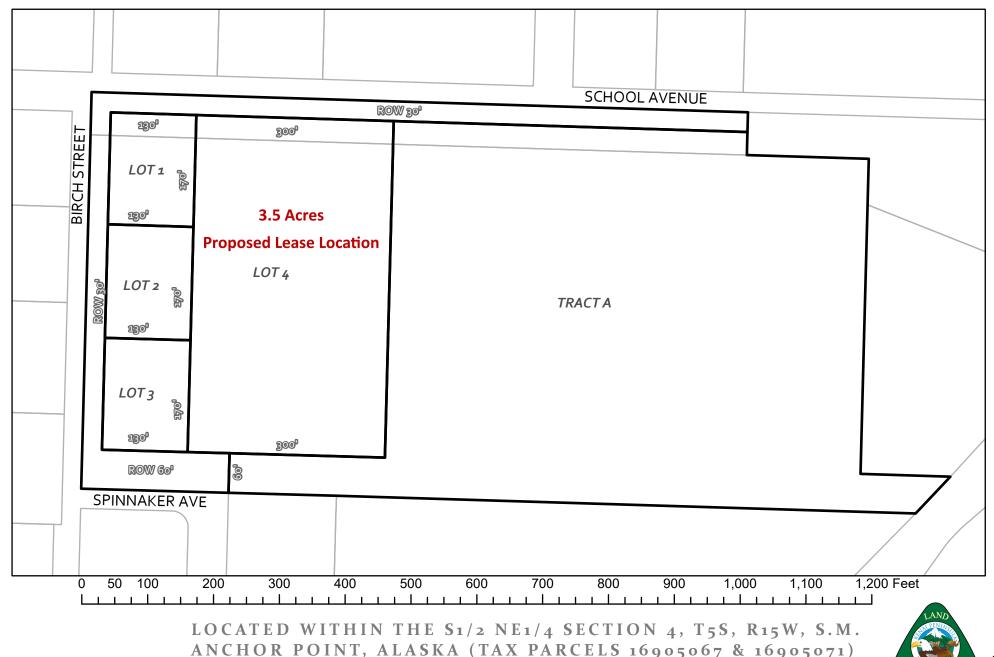
Going forward with the planned permanent pantry development, we anticipate: Continuing with our traditional funding program. This funding stream would be primarily dedicated to the on-going day to day operations necessary to carry out the Pantry mission. Increased goals would be set, and fundraising efforts elevated to match the operational costs of the new facility (or facilities) as they are brought on-line.

Support from the community at large and community partners is both needed and anticipated; and has historically been realized.

We plan on implementing targeted requests and special fundraising campaigns designed to secure one-time funds specifically earmarked for the construction of the pantry facilities and infrastructure on the proposed property. This will be a major effort. It will be linked with the phased development of the site. We anticipate this fundraising effort to focus heavily on grants, corporate and business donations, and on in-kind services from local and regional contractors, subcontractors and design professionals.

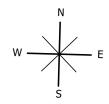
As the new facilities move from construction to operational status, we will begin to implement new revenue streams from the facilities themselves; including renting to private parties for events; charging usage fees to the general public for their special events; perhaps some rental income, etc. All the while keeping in mind the community that helped and supported us. We intend to keep costs to a minimum, if any, for community events. These new revenue streams will help with the day to days costs of ongoing operations, and the operations and maintenance of the facilities themselves.

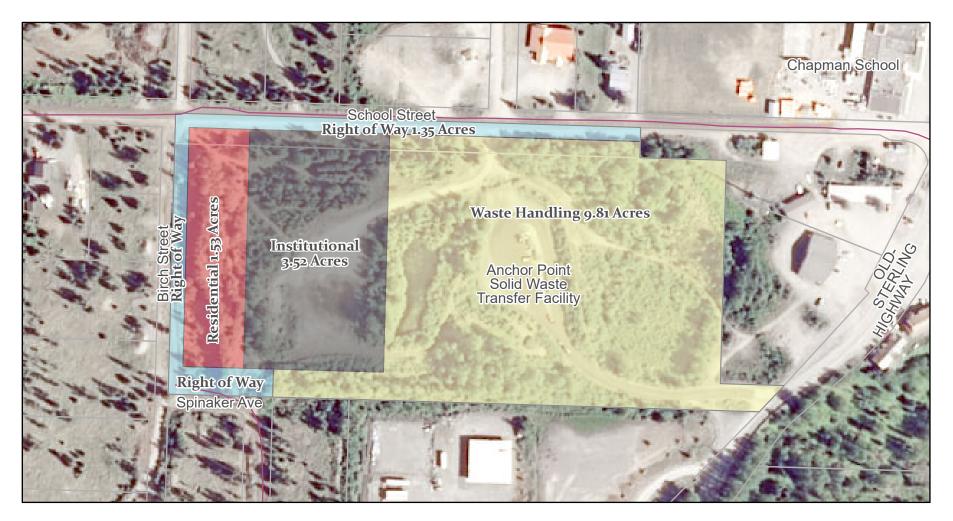
## EXHIBIT A PLAN OF SURVEY "COMMON GROUND SUBDIVISION"



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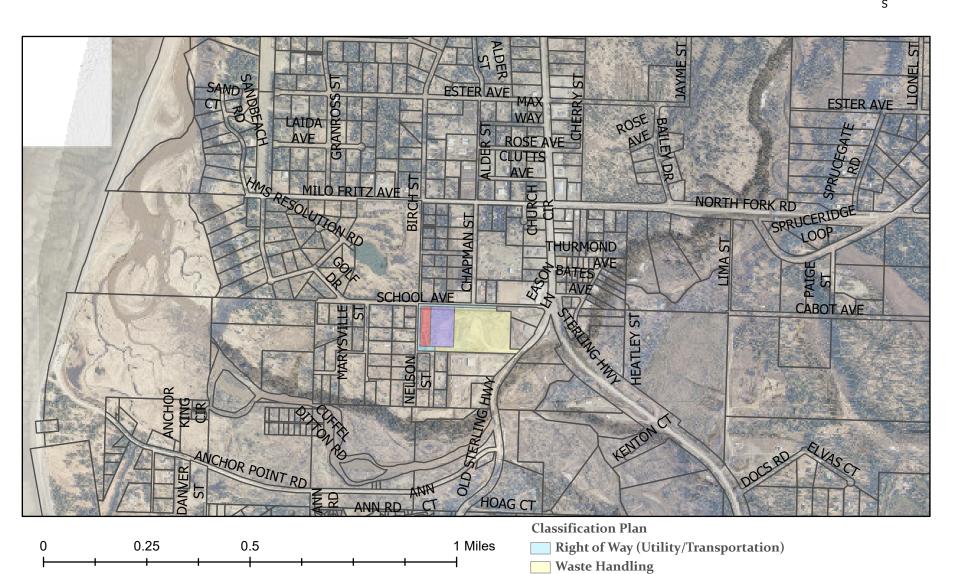
# Land Classification Plan 16.2 Acres in Anchor Point, Alaska Kenai Peninsula Borough Land Management Division





0 60 120 240 360 Feet

# Land Classification Vicinity Map Anchor Point, Alaska Kenai Peninsula Borough Land Management Division



Residential Institutional

Introduced by:	Mayor
Date:	10/12/21
Action:	Adopted
Vote:	9 Yes, 0 No, 0 Absent

### KENAI PENINSULA BOROUGH RESOLUTION 2021-075

### A RESOLUTION CLASSIFYING CERTAIN PARCELS OF BOROUGH OWNED LAND IN THE ANCHOR POINT AREA

- WHEREAS, the Kenai Peninsula Borough ("Borough") is the title owner of the subject land; and
- **WHEREAS,** pursuant to KPB 17.10.080 classification provides guidance for the management of borough land; and
- WHEREAS, public notice was published and notification was sent to land owners and/or leaseholders of record within a one-half mile radius of the land proposed for classification, including applicable borough departments, government agencies, and interested parties; and
- **WHEREAS**, the Anchor Point Advisory Planning Commission, at its meeting held on September 9, 2021, did not recommend approval; and
- WHEREAS, the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of September 27, 2021 recommended approval;

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

**SECTION 1.** Based on the findings of fact, analysis, and conclusions contained in the staff report of September 27, 2021 the following classifications for borough lands described below are compatible with the surrounding land use and shall be classified as follows consistent with the Plan of Classification map contained in the staff report:

Assessor's Parcel No.	General Location	Legal Description	Acres	Classification
169-050-71	Anchor Point	That portion of S1/2 NE1/4 as per WD Book 143, Page 830 Homer Recording District, Excluding that Portion as per Commissioners QCD Book 194, Page 990 T5S, R15W. S.M.	14.43	Waste Handling/ Institutional/ Residential/ Utility Transportation
169-050-67	Anchor Point	That portion of S1/2 NE1/4 as per QCD Book 194, Page 985 Homer Recording District, T5S, R15W. S.M.	1.49	Waste Handling/ Institutional/ Residential/ Utility Transportation

**SECTION 2.** This resolution shall take effect immediately upon adoption.

# ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 12TH DAY OF OCTOBER, 2021.

Brent Hibbert, Assembly President

ATTEST:

Jonni Blankenship, MMC, Borough Clerk



Yes:

Bjorkman, Carpenter, Chesley, Cox, Derkevorkian, Dunne, Elam, Johnson, Hibbert

No: None

Absent: None

Introduced by:
Date:
Hearing:
Action:
Vote:

### KENAI PENINSULA BOROUGH ORDINANCE 2022-07

### AN ORDINANCE ADOPTING THE 2022 KENAI PENINSULA BOROUGH ASSEMBLY AND BOARD OF EDUCATION APPORTIONMENT PLANS AND SUBMITTING THE APPORTIOMENT PLANS TO THE VOTERS

- WHEREAS, Kenai Peninsula Borough (Borough) code and Alaska Statute (AS), require that not later than two months after adoption of a final state redistricting plan under art.VI, sec. 10, Constitution of the State of Alaska, the assembly determine and declare by resolution whether the existing apportionment of the assembly meets the standards of AS 29.20.060; and
- WHEREAS, Resolution 2022-003, adopted within two months of the final state redistricting plan, determined and declared that the Borough Assembly is currently malapportioned based upon the 2020 population figures from the U. S. Census Bureau; and
- **WHEREAS**, pursuant to that resolution, the assembly president appointed a reapportionment committee to consider and propose plans to correct the malapportionment; and
- **WHEREAS,** the committee has referred two alternative Borough Assembly and Board of Education representation plans: (1) single member districts containing nine districts and (2) single member districts containing eleven districts; and
- WHEREAS, the committee recommends that the assembly submit both plans to the voters; and
- **WHEREAS**, per the final report the committee unanimously preferred the nine-member district option; and
- WHEREAS, Alaska Statute 29.20.070(c) requires the assembly to submit to the voters proposed forms of representation, and Alaska Statute 29.20.080(e) requires that the assembly by ordinance adopt an ordinance providing for reapportionment and submit the ordinance to the voters;

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

**SECTION 1.** That the assembly adopts two Borough Assembly and Board of Education representation plans to be selected by borough voters: Plan 1 includes 9 single

member districts, and Plan 2 includes 11 single member districts, both of which are described in the 2022 Kenai Peninsula Borough Assembly Reapportionment Plan, attached to and incorporated by reference into this ordinance as Attachment A. In both plans, assembly members and school board members would be elected by voters residing in the district the member represents.

**SECTION 2.** That the following proposition be placed on the ballot of the October 4, 2022 regular borough election:

PROPOSITION: CHOOSE ONE OF THE FOLLOWING PLANS FOR KENAI PENINSULA BOROUGH ASSEMBLY AND BOARD OF EDUCATION REPRESENTATION:

- Plan 1: 9 single member districts
- Plan 2: 11 single member districts

DESCRIPTION OF APPORTIONMENT PLAN: State law requires that the Kenai Peninsula Borough Assembly adopt an apportionment plan for borough assembly representation, following the 2020 federal census.

Kenai Peninsula Borough Ordinance 2022-XX meets this requirement by adopting and presenting to the voters for selection two representation and apportionment options, one of which is different from the current plan. The plan receiving the most votes will be put into place after the election.

The first option, Plan 1, would consist of 9 districts in the borough. Each district would have one assembly member and one board of education member, elected by the voters of that district.

The second option, Plan 2, would consist of 11 districts in the borough. Each district would have one assembly member and one board of education member, elected by the voters of that district.

- **SECTION 3.** That the assembly shall, after certification of the October 4, 2022 election, adopt or enact such ordinances or other actions that are necessary to provide for the composition of the assembly and board of education in accordance with the plan of representation and apportionment that receives the most votes.
- **SECTION 4.** That section 2 of this ordinance shall be effective immediately upon its enactment. Sections 1 and 3 of this ordinance shall become effective upon the date the October 4, 2022 election is certified by the borough assembly.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS  $\ast$  DAY OF  $\ast, 2022.$ 

ATTEST:

Brent Johnson, Assembly President

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Reapportionment Committee 144 N. Binkley Street Soldotna, AK 99669

Debbie Cary, Chairperson

# 2022 Kenai Peninsula Borough Assembly and Board of Education Reapportionment Plan

**The Process:** On January 4, 2011, the Kenai Peninsula Assembly adopted Resolution 2022-003 authorizing the formation of the Reapportionment Committee (Committee). Section 2 of the resolution instructed the Committee to develop one or more plans for the apportionment of the Assembly and the Board of Education for the Assembly's consideration.

The Committee had its first meeting on January 26, 2022, and subsequently met again on February 23<sup>rd</sup>, March 2<sup>nd</sup> and March 15<sup>th</sup>.

The committee was given an overview of the process by Borough Attorney Sean Kelley and Borough Clerk Johni Blankenship.

The overview was followed by an open discussion of the Committee's objective.

All members agreed that it was important to maintain the continuity of communities (cities and/or neighborhoods) as much as possible while still striving to meet the one person – one vote objective.

The Committee reviewed and discussed a seven-member, nine-member, and eleven-member configuration, settling on the nine- and eleven-member districts.

At the February 23, 2022 meetings the committee was presented with the first version of conceptual maps created by Bobbi Lay from the Borough's GIS Department. The committee had concerns with the proposed 9-member district map as it was significantly different from the current boundaries.

The consensus was that the current nine-member configuration was working well and in reality, only a small adjustment was needed to the current configuration to meet the desired deviation parameters.

On March 2, 2022 the committee was presented with a new 9-member district conceptual map which they unanimously supported. They requested some minor edits regarding how waterbodies were depicted on the map.

The committee discussed both the nine- and eleven-member districts and recommend that both options are presented to the voters; however, the committee unanimously prefers the nine-member district option.

The Committee offered opportunity for public comment at all of its meetings; however, no public comment was received. The Committee meetings were advertised on the borough's homepage calendar, and on the borough Facebook page.

## Final Committee Recommendations:

The Reapportionment Committee recommends the Assembly place the following question to the voters at the October 4, 2022 regular election:

Choose one of the Following Plans for Kenai Peninsula Borough Assembly and Board of Education Representation.

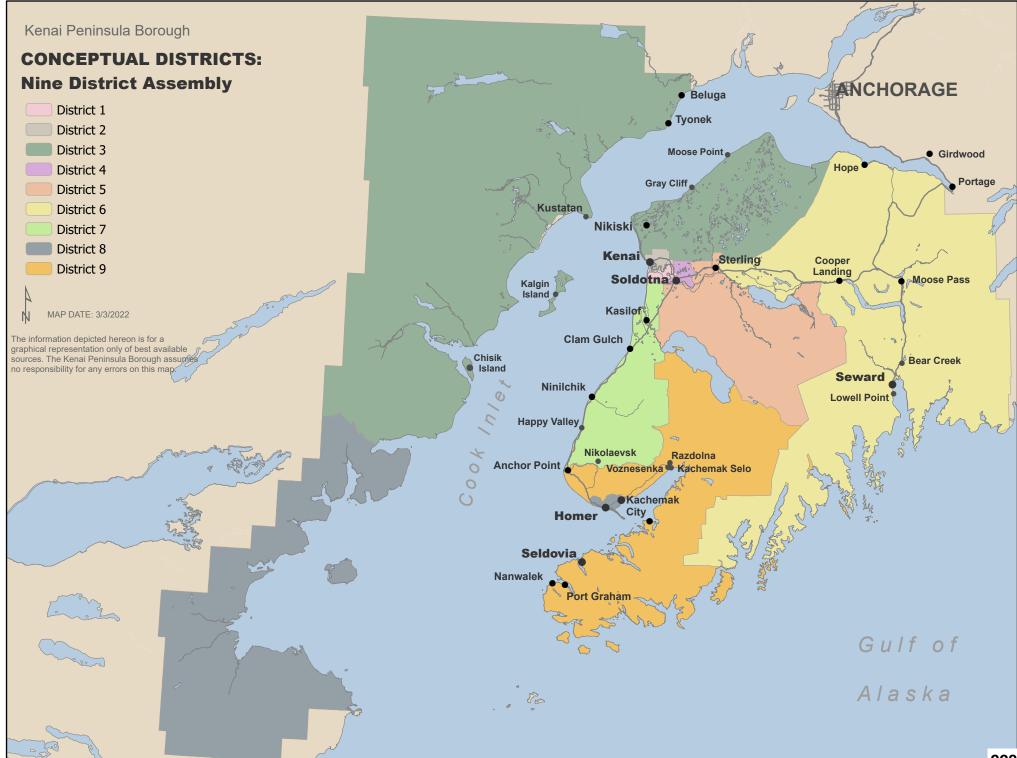
- Plan 1: Nine (9) Single Member Districts
- D Plan 2: Eleven (11) Single Member Districts

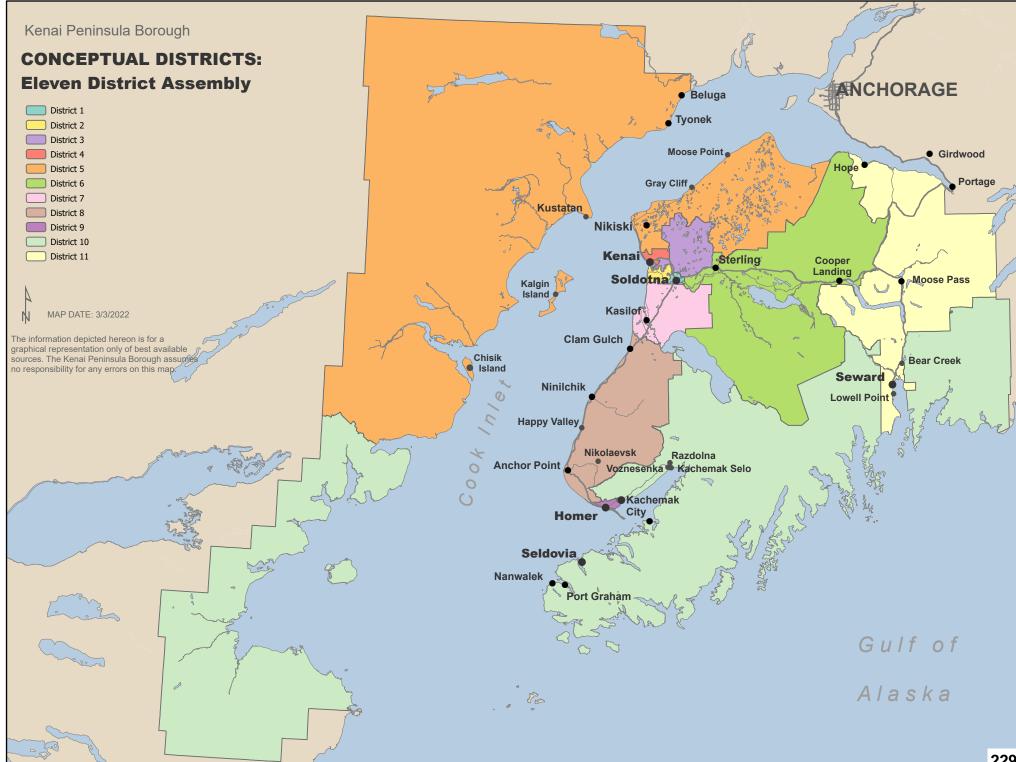
DESCRIPTION OF APPORTIONMENT PLAN: State Law requires that the Kenai Peninsula Borough Assembly adopt an apportionment plan for Borough Assembly representation, after the 2020 federal census. Kenai Peninsula Borough Ordinance 2022-XX meets this requirement by adopting and presenting to the voters for selection two representations and options, one of which is different from the current plan.

The first option, Plan 1, would consist of nine (9) districts in the borough. Each district would have one Assembly member and one Board of Education member, elected by the voters of that district.

The second option, Plan 2, would consist of eleven (11) districts in the borough. Each district would have one Assembly member and one Board of Education member, elected by the voters of that district.

All supporting documentation is available on the committee webpage located at the following address: <u>https://www.kpb.us/assembly-clerk/active-task-forces/reapportionment-committee</u>





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 reresentative on the committee.

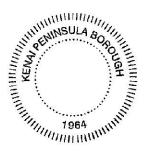
- **SECTION 4.** That the Reapportionment Committee shall file a report recommending one or more plans for Assembly and Board of Education apportionment with the Borough Clerk no later than Thursday, June 23, 2022, for inclusion in the Assembly Packet of July 5, 2022.
- **SECTION 5.** That the Borough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

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Brent Johnson, Assembly President



Yes:

.

None

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

No: None

Absent:

Introduced by: Date: Action: Vote: Mayor 04/19/22

### KENAI PENINSULA BOROUGH RESOLUTION 2022-026

### A RESOLUTION FOR AUTHORIZING THE APPLICATION OF COMMUNITY DEVELOPMENT BLOCK GRANT FOR NINILCHIK FIRE STATION COVID SAFETY IMPROVEMENTS

- WHEREAS, the State of Alaska application process for the Community Development Block Grant, Coronavirus ("CBDG-CV") requires the Kenai Peninsula Borough ("Borough") to pass a resolution in order to apply for grant funds; and
- WHEREAS, the Borough will apply for funds for the Ninilchik Fire Station COVID Safety Improvements requesting an amount of up to \$850,000.00 from the Alaska Department of Commerce, Community, and Economic Development under the CDBG-CV program; and
- **WHEREAS,** if adopted, this resolution will authorize the Mayor, or the Mayor's designee, to apply for the grant;

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

- **SECTION 1.** The Kenai Peninsula Borough Assembly finds it is in its best interest to apply for the Community Development Block Grant, Coronavirus grant.
- **SECTION 2.** The Mayor, or the Mayor's designee, is hereby authorized to negotiate and execute any and all documents required for granting and managing funds on behalf of this organization.
- **SECTION 3.** The Mayor, or the Mayor's designee, is also authorized to execute subsequent amendments to said grant agreement to provide for adjustments to the project within the scope of services or tasks, based upon the needs of the project.
- **SECTION 4.** That this resolution shall be effective immediately upon its adoption.

# ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 19TH DAY APRIL, 2022.

ATTEST:

Brent Johnson, Assembly President

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Community & Fiscal Projects

Improvements (Mayor)

## MEMORANDUM

TO:	Brent Johnson, Assembly President Members, Kenai Peninsula Borough Assembly
THRU:	Charlie Pierce, Mayor (f
FROM:	Rachel Chaffee, Community & Fiscal Projects Manager 🛚 🏌
DATE:	April 7, 2022
RE:	Resolution 2022-026, Authorizing the Application of Community Development Block Grant for Ninilchik Fire Station COVID Safety

The Community Development Block Grant-Coronavirus is a grant issued by the State of Alaska, Department of Commerce, Community, and Economic Development. It is a pass-through grant from the United States Department of Housing and Urban Development (HUD). It is limited to communities that are listed by the HUD as Low to Moderate Income communities.

Ninilchik is a community within the Kenai Peninsula Borough that qualifies under the grant criteria and qualifiable expenses requirements, to wit: the community fire station has a need for COVID safety improvements. Therefore, Ninilchik's COVID safety improvements will be the identified project for this grant.

In order to apply for this grant, the granting agency has the requirement that the Assembly authorize the Mayor to apply for the grant, and the project.

Your consideration of this resolution is appreciated.

Introduced by: Date: Action: Vote: Mayor 04/19/22

## KENAI PENINSULA BOROUGH RESOLUTION 2022-024

## A RESOLUTION CLASSIFYING CERTAIN PARCELS OF BOROUGH OWNED LAND IN THE DIAMOND RIDGE AREA

- WHEREAS, the Kenai Peninsula Borough has received title to the subject lands described below; and
- **WHEREAS**, pursuant to KPB 17.10.080 classification provides guidance for the management of borough owned land; and
- WHEREAS, public notice was published and notification was sent to land owners and/or leaseholders of record within a one-half mile radius of the land proposed for classification, including applicable departments, agencies, and interested parties; and
- WHEREAS, the Kachemak Advisory Planning Commission at its regular scheduled meeting held on April 7, 2022 recommended \_\_\_\_\_; and
- WHEREAS, the Kenai Peninsula Borough Planning Commission at its regular scheduled meeting of April 11, 2022 recommended \_\_\_\_\_\_.

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

**SECTION 1.** That based on the findings of fact, analysis, and conclusions contained in the staff report of April 11, 2022 the borough owned lands described below shall be classified as follows:

	Description of Borough Land Proposed Lease			
Parcel	General	Legal Description	Acres	Proposed
ID No.	Location		+/-	Classification
17113141	Diamond Ridge	Portion of Tract A, ASLS 2003-6, Plat No. 2004-108, Homer Recording District, Third Judicial District, State of Alaska	4.3	Recreational
17113106	Diamond Ridge	Portion of SW <sup>1</sup> / <sub>4</sub> NW <sup>1</sup> / <sub>4</sub> , NW <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub> , S <sup>1</sup> / <sub>2</sub> NE <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub> , Section 27, Township 05 South, Range 13 West, Seward Meridian, Homer Recording District, Third Judicial District, State of Alaska	3.0	Recreational

**SECTION 2.** This resolution shall be effective immediately upon adoption.

# ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 19TH DAY OF APRIL, 2022.

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

#### AGENDA ITEM \_\_\_\_. PUBLIC HEARINGS

\_\_\_\_. Proposed Classification of Certain Borough Land, Pursuant to KPB Code of Ordinances, Chapter 17.10.080.

#### STAFF REPORT

PC Meeting April 11, 2022

**Basis for Classification:** Subject parcels are being considered for future disposal or lease. Homer Rope Tow is requesting a lease of borough land for the construction/maintenance of a parking area for its visitors. Classification provides guidance for the management of borough land. KPB land must be classified prior to disposal or leasing pursuant to KPB Code of Ordinances, Chapter 17.10.090.

	Description of Borough Land Proposed for Classification				
Assessor's Parcel No.	General Location	Legal Description	Acres+/-	Proposed Classification	Zoning
17113141	Diamond Ridge	Portion of Tract A, ASLS 2003-6, Plat No. 2004-108, Homer Recording District, Third Judicial District, State of Alaska	4.3	Recreational	Rural District
17113106	Diamond Ridge	Portion of SW <sup>1</sup> /4NW <sup>1</sup> /4, NW <sup>1</sup> /4SW <sup>1</sup> /4, S <sup>1</sup> /2NE <sup>1</sup> /4SW <sup>1</sup> /4, Section 27, Township 05 South, Range 13 West, Seward Meridian, Homer Recording District, Third Judicial District, State of Alaska	3	Recreational	Rural District

**Public Notice:** Public notice was published in the Peninsula Clarion and Homer Newspaper on March 23 and March 30, 2022. Public notice is sent to all land owners and/or leaseholders within a one-half mile radius of the land proposed to be classified, applicable agencies, and interested parties. The notice consists of a cover letter, map, and list of land classification definitions. Written public comments were requested to be returned by 4:00 p.m., April 6, 2022.

	Description of Borough Land Proposed for Classification				
Assessor's Parcel No.	General Location	Legal Description	Acres+/-	Proposed Classification	Zoning
17113141	Diamond Ridge	Tract A, ASLS 2003-6, Plat No. 2004- 108, Homer Recording District, Third Judicial District, State of Alaska	4.3	Recreational	Rural District
IntegeJudicial District, State of AlaskaClassification"Recreational" means land located in an area where the potential for recreational use exists.Definition(s):This may include both indoor and outdoor uses such as gun ranges, archery ranges, camping, golf courses, snow machine trails, cross country trails, skiing, boating, fishing or which may provide access to those activities. Recreational does not include use of lands for amusement parks. Site conditions for any authorized use must be appropriate and suited for such uses. Recreational lands disposed of to private parties must allow public use unless specifically waived by ordinance. If recreational lands are for sale or lease then restrictions may be imposed for appropriate uses given conditions and surrounding use. Not all activities are suitable for all sites.					
Zoning: Land use in the Rural District shall be unrestricted except as otherwise provided in KPB Title 21.					

**Overview**: A portion of a large acre parcel in the Diamond Ridge area near Mile Post 2 and along the north side of Ohlson Mountain Road. This parcel will be managed in combination with Parcel 17113106. Homer Rope Tow has applied for lease of five acres west of the Watermelon Trailhead.

#### **Findings of Fact:**

- Property Status: The Borough received title by State Patent. The parcel is not classified (undesignated). The parcel is subject to several easements including a public parking area easement for the Watermelon trailhead, currently managed by Snomads, Inc. under a Community Trails Management Agreement serialized as CTMA 2021-01. Homer Rope Tow has applied for a lease of a 2-acre portion located west of the Watermelon Trailhead. This parcel is within Kenai Area Plan (KAP) Unit 209A. Per the KAP, conveyances will reserve legal access along the east side to provide access from Ohlson Mountain Road to top of the ski area, and Watermelon and Ohlson Mountain trails are reserved for access. This parcel does not have a South Peninsula Plan recommendation.
- 2. Zoning: The property is within the Rural District pursuant to KPB 21.04.010(B).
- 3. <u>Topography</u>: Subject parcel is generally level with rolling uplands and is partially wooded (~30%) with mostly spruce mixed with some birch and alder.
- 4. <u>Soil</u>: 8.6% of parcel is classified as **565 "Iliamna Silt Loam"**, sandy substratum, 4 to 15 percent slopes, well-drained with a depth to water table at more than 201 inches, somewhat limited for dwellings with and without basements, very limited for septic tank absorption, based on seepage, bottom layer.

28.7% of parcel is classified as **573 "Kachemak Silt Loam"**, sandy substratum, 4 to 8 percent slopes, well-drained with a depth to water table at more than 201 inches, not limited for dwellings with and without basements, very limited for septic tank absorption, based on seepage, bottom layer.

62.7% of parcel is classified as **575 "Kachemak Silt Loam"**, sandy substratum, 15 to 25 percent slopes, well-drained with a depth to water table at more than 201 inches, very limited for dwellings with and without basements, very limited for septic tank absorption, based on seepage, bottom layer.

Source Data: Web Soil Survey, provided by the U.S.D.A. Natural Resources Conservation Service, Available online at the following link: https://websoilsurvey.sc.egov.usda.gov/. Accessed [Jan/19/2022].

(Note: Soil information is not site-specific and does not eliminate the need for onsite testing and sampling).

- 5. <u>Surrounding Land Use</u>: No comprehensive land use plan has been developed for this area. Surrounding land use incudes residential and undeveloped land. The general area serves a wide variety of outdoor uses. Snomads, Inc. manages the Ohlson Mountain and Watermelon Trails and trailhead along the north side of Ohlson Mountain Road. Kachemak Nordic Ski Club, Inc. manages a system of trails and an event area on the south side of Ohlson Mountain Road. The Homer Rope Tow owns and operates a downhill skiing and snowboarding instructional program within close proximity.
- 6. <u>Surrounding Land Ownership</u>: The State of Alaska owns one parcel to the south of Ohlson Mountain Road. The surrounding land is primarily in private and borough ownership.
- 7. <u>Access</u>: The parcel has dedicated access along the south and west boundary. A 50-foot wide sectionline easement exists along the west boundary of this parcel. The west side of the parcel also has a

gravel road built into it from Ohlson Mountain Road, a paved, AK DOT maintained road.

- 8. <u>Utilities:</u> Electric and telephone services are available.
- 9. <u>Public Comment</u>: As of the writing of this report no written comments have been received. Written comments received by the Planning Department after the writing of this report will be presented at the Planning Commission Hearing.
- 10. <u>Kachemak Bay Advisory Planning Commission (KAPC) Review</u>: On April 7, 2021 the KPAPC held a public meeting and recommended\_\_\_\_\_\_.
- 11. <u>Department / Agency Comments</u>: As of the writing of this report three agencies responded with either no comment / no objection or had no issues.

#### Analysis:

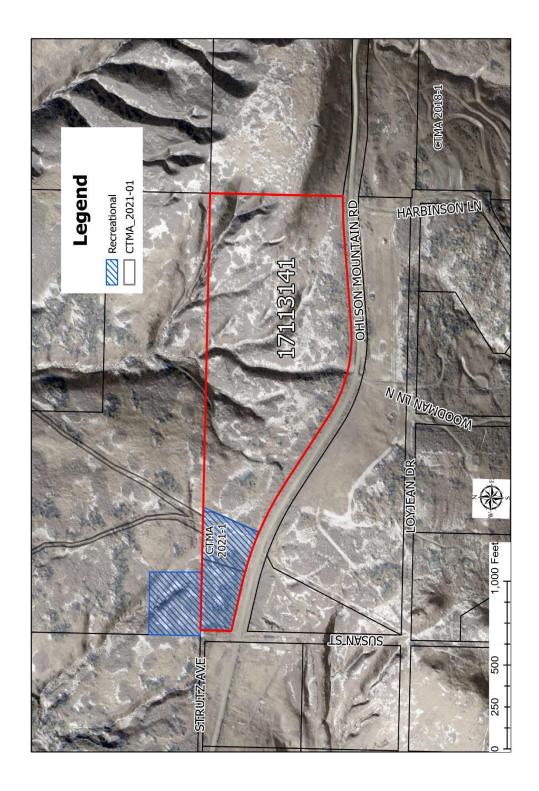
Several factors limit the development potential of this parcel including its shape and topography, wetlands, easements, and the existing road. The general area has historically served a variety of recreational public uses. The Watermelon Trailhead is actively managed by Snomads, Inc. and serves as a staging/parking area for accessing the Watermelon and Ohlson Mountain trails. Parking for visitors of the Homer Rope Tow is currently located to the west in a small pull-out along Ohlson Mountain Road. The pull-out is often full resulting in visitors parking along Ohlson Mountain Road and creating a safety concern within the right-of-way. Classifying subject parcel as Recreational is supported by <u>Goal 1 (Focus Area: Tourism and Recreation)</u>, Objective B, Strategy 3, <u>Goal 2 (Focus Area: Land Use)</u>, Objective A, Strategy 1.c, Objective C, Strategy 2.c, and Objective F, Strategy 1.c, <u>Goal 3 (Focus Area: Housing)</u>, Objective D, Strategy 4 and <u>Goal 4 (Focus Area: Transportation)</u>, Objective C, Strategy 1.g of the Kenai Peninsula Borough Comprehensive Plan.

#### **Conclusions:**

A recreational classification is compatible with the existing uses and the proposed new use.

#### **Recommendation:**

Based on the findings of fact, analysis, and conclusions, a Recreational classification is recommended.



	D	escription of Borough Land Proposed	for Classi	fication	
Assessor's Parcel No.	General Location	Legal Description	Acres+/-	Proposed Classification	Zoning
17113106	Diamond	Portion of SW <sup>1</sup> /4NW <sup>1</sup> /4, NW <sup>1</sup> /4SW <sup>1</sup> /4, S <sup>1</sup> /2NE <sup>1</sup> /4SW <sup>1</sup> /4, Section 27, Township 05 South, Range 13 West, Seward Meridian, Homer Recording District, Third Judicial District, State of Alaska	3	Recreational	Rural District
Classification Definition(s):	exists. The camping or which for amus suited for unless restriction of the content of the conten	<i>tional</i> " means land located in an area his may include both indoor and outdoo , golf courses, snow machine trails, cro may provide access to those activities. I sement parks. Site conditions for any r such uses. Recreational lands dispose as specifically waived by ordinance. If r ons may be imposed for appropriate use ctivities are suitable for all sites.	r uses such oss country Recreationa authorized ed of to pri- ecreational	as gun ranges, a trails, skiing, b al does not inclu use must be a vate parties mu lands are for sa	archery ranges, poating, fishing ide use of lands ppropriate and st allow public le or lease then
Zoning:		e in the Rural District shall be unrestric	ted except	as otherwise pr	ovided in KPB

**Overview:** Large acre parcel in the Diamond Ridge area access off of Ohlson Mountain Road by way of Susan Street and a section line easement. This parcel will be managed in combination with Parcel 17113141. Homer Rope Tow has applied for a lease of five acres west of the Watermelon Trailhead.

#### Findings of Fact:

- <u>Property Status</u>: The Borough received title by State patent. This parcel is not classified (undesignated). The parcel is subject to a public access and a public travelway easement for the Watermelon and Ohlson Mountain trails, each which are managed by Snomads, Inc., under a Community Trails Management Agreement serialized as CTMA 2021-01. The final recommendation of the South Peninsula Plan was for residential with a recreation corridor centered on existing trail, and possible Grazing overlay on the south end of the parcel.
- 1. <u>Zoning</u>: The property is within the Rural District pursuant to KPB 21.04.010(B).
- 2. <u>Topography:</u> This parcel is relatively level and mostly forested with spruce trees.
- 3. <u>Soil</u>: 46.4% of this parcel is classified as **573 "Kachemak Silt Loam"**, sandy substratum, 4 to 8 percent slopes, well-drained with a depth to water table at more than 201 inches, not limited for dwellings with and without basements, very limited for septic tank absorption, based on seepage, bottom layer.

53.6% of this parcel is classified as **575 "Kachemak Silt Loam"**, sandy substratum, 15 to 25 percent slopes, well drained with a depth to water table at more than 201 inches, very limited for dwellings with and without basements, very limited for septic tank absorption, based on seepage, bottom layer.

19.9% of this parcel is classified as 577 "Kachemak Silt Loam", sandy substratum, 35 to 45 percent

Source Data: Web Soil Survey, provided by the U.S.D.A. Natural Resources Conservation Service, Available online at the following link: https://websoilsurvey.sc.egov.usda.gov/. Accessed [Jan/19/2022].

(Note: Soil information is not site-specific and does not eliminate the need for onsite testing and sampling).

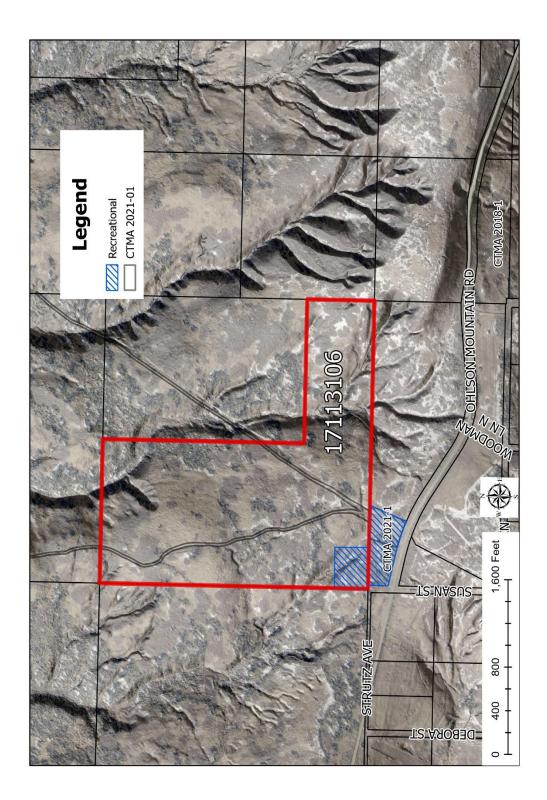
- 4. <u>Surrounding Land Use</u>: No comprehensive land use plan has been developed for this area. Surrounding land use includes residential and undeveloped land. The Watermelon and Ohlson Mountain trails and trailhead are located in the area and are currently managed by Snomads, Inc. under a Community Trails Management Agreement serialized as CTMA 2021-01. Borough lands managed by the Kachemak Nordic Ski Club, Inc. under CTMA 2018-01 and east of Harbinson Lane have been classified as Recreational pursuant to KPB Resolution 2009-099.
- 6. <u>Surrounding Ownership</u>: Surrounding land ownership is primarily in private and borough ownership, with one parcel to the south of Ohlson Mountain Road being owned by the State of Alaska.
- 7. <u>Access</u>: The parcel is accessed from Susan Street located at approximately Mile Post 2.5 of Ohlson Mountain Road. There is an undeveloped 50-foot wide section line easement along the west parcel boundary. The parcel is subject to a 60-foot wide Public Access Easement shown on Plat No. 88-12, Homer Recording District (Watermelon Trail) and a 60-foot wide Public Travelway Easement (Ohlson Mountain Trail) recorded as document number 2016-001878-0 in the Homer Recording District.
- 8. <u>Utilities</u>: Electric and telephone services are available.
- 9. <u>Public Comments</u>: As of the writing of this report one written comment has been received. Written comments received by the Planning Department after the writing of this report will be presented at the Planning Commission Hearing.
- 10. <u>Department / Agency Comments</u>: As of the writing of this report three agencies responded with either no comment / no objection or had no issues.

#### Analysis:

With dedicated access, a section line easement, developed and maintained trails providing access to and through this parcel, suitable topography, and availability of utilities, this parcel has potential for economic development. Classifying the subject parcel as Recreational is supported by <u>Goal 1 (Focus Area: Tourism and Recreation)</u>, Objective B, Strategy 3; <u>Goal 2 (Focus Area: Land Use)</u>, Objective A, Strategy 1.c, Objective C, Strategy 2.c, and Objective F, Strategy 1.c; <u>Goal 3 (Focus Area: Housing)</u>, Objective D, Strategy 4; and <u>Goal 4 (Focus Area: Transportation)</u>, Objective C, Strategy 1.g of the Kenai Peninsula Borough Comprehensive Plan.

#### **Conclusions:**

A Recreational classification is compatible with the attributes and existing or future uses of the parcel and does not restrict future overlapping classifications.



**STAFF RECOMMENDATION:** Based on the findings of fact, analysis, and conclusions that the KPB Planning Commission finds that it is in the borough's best interest to recommend adoption of a Resolution classifying subject land as follows:

		Description of Borough Land Pr	oposed fo	r Classification	
Assessor's Parcel No.	General Location	Legal Description	Acres+/-	Classification	Zoning
17113141	Diamond Ridge	Portion of Tract A, ASLS 2003-6, Plat No. 2004-108, Homer Recording District, Third Judicial District, State of Alaska	4.3	Recreational	Rural District
17113106	Diamond Ridge	Portion of SW <sup>1</sup> /4NW <sup>1</sup> /4, NW <sup>1</sup> /4SW <sup>1</sup> /4, S <sup>1</sup> /2NE <sup>1</sup> /4SW <sup>1</sup> /4, Section 27, Township 05 South, Range 13 West, Seward Meridian, Homer Recording District, Third Judicial District, State of Alaska	3	Recreational	Rural District

END OF STAFF REPORT

Introduced by:	
Date:	
Action:	
Vote:	

Mayor 04/19/22

### KENAI PENINSULA BOROUGH RESOLUTION 2022-025

# A RESOLUTION PROVIDING A 30-DAY APPLICATION PERIOD PRIOR TO INACTIVATING THE KALIFORNSKY ADVISORY PLANNING COMMISSION

- WHEREAS, the Kenai Peninsula Borough ("Borough") has established Advisory Planning Commissions ("APCs") in several communities throughout the Borough, including the Kalifornsky APC; and
- WHEREAS, the Kalifornsky APC was established by Ordinance 2019-21 and held its first meeting on November 18, 2019; and
- **WHEREAS,** APCs may seat up to seven members, and at least four members are required to constitute a quorum; and
- **WHEREAS,** currently there are two declared vacancies on this APC, Seat D and Seat E, due to the fact that the terms for both seats expired on September 30, 2021
- **WHEREAS,** no applications have been received to date to fill Seat D and Seat E on this APC; and
- WHEREAS, as of January 2022, four of the five seated Kalifornsky APC members have submitted resignations and/or cannot be reached, those seats being Seats B, C, F, and G; and
- **WHEREAS,** there is only one remaining seated member on the Kalifornsky APC and therefore the APC is unable to hold a meeting to declare vacancies on the APC as required by KPB 21.02.100; and
- **WHEREAS,** Borough code does not address how or when APCs should be inactivated when a quorum cannot be constituted; and
- WHEREAS, at its meeting held on April 11, 2022, the Borough Planning Commission recommended \_\_\_\_\_;

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

- **SECTION 1.** That the Assembly declares Kalifornsky APC Seats B, C, F, and G are vacant and the Borough shall, for a period of thirty days, advertise for applicants to fill those vacancies.
- **SECTION 2.** That if, during the 30-day application period, the Borough receives applicants for the Kalifornsky APC but there remains an insufficient number of qualified applicants to constitute a quorum, the Borough will then list the Kalifornsky APC as inactive.
- **SECTION 3.** This resolution is effective immediately upon adoption.

# ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 19TH DAY OF APRIL, 2022.

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

## Kenai Peninsula Borough Planning Department

## MEMORANDUM

TO:	Brent Johnson, Assembly President Members, Kenai Peninsula Borough Assembly
THRU:	Charlie Pierce, Mayor UK for LA Melanie Aeschliman, Planning Director MA
FROM:	Samantha Lopez, Senior Manager SL
DATE:	April 7, 2022
RE:	Resolution 2022- <u>025</u> , Providing a 30-Day Application Period Prior to Inactivating the Kalifornsky Advisory Planning Commission (Mayor)

The Kenai Peninsula Borough has established Advisory Planning Commissions (APCs) in several communities throughout the borough, one being the Kalifornsky APC. The Kalifornsky APC was established by Ordinance 2019-21 and held its first meeting on November 18, 2019. APCs may seat up to seven members, and at least four members are required to make a quorum.

There are two declared vacancies on the Kalifornsky APC (Seats D and E) as the terms for both seats expired on September 30, 2021. No applications have been received to date to fill Seats D or E. In addition, as of January 2022, four of the five-seated Kalifornsky APC members have submitted resignations and/or cannot be reached (Seats B, C, F, and G). This APC now only has one seated member and therefore the APC is not able to declare vacancies for the other seats per KPB 21.02.100. Code does not address how or when APCs should be inactivated when a quorum cannot be formed.

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

Your consideration of this resolution is appreciated.

Introduced by:	Mayor
Date:	04/19/22
Hearing:	05/03/22
Action:	
Vote:	

#### KENAI PENINSULA BOROUGH ORDINANCE 2021-19-48

### AN ORDINANCE APPROPRIATING SUPPLEMENTAL FUNDING TO COMPLETE THE AIR CONDITIONER UNIT REPLACEMENT PROJECT LOCATED IN THE EMERGENCY RESPONSE CENTER SERVER ROOM

- **WHEREAS,** the 2022 fiscal year budget includes an appropriation in the amount of \$25,000 to replace the air conditioning unit (A/C unit) located in the server room of the Kenai Peninsula Borough ("Borough") Emergency Response Center; and
- WHEREAS, the total costs of the project exceed the estimate, in the amount of \$3,000; and
- **WHEREAS,** it is in the best interest of the borough to replace the failing A/C unit to maintain a temperature-controlled environment for vital communications equipment that supports emergency management functions;

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

- **SECTION 1.** That \$3,000 is appropriated from the borough General Government Capital Project Fund, fund balance to account 407.11250.22471.49999, to meet the project total costs.
- **SECTION 2.** This ordinance shall be effective immediately upon its enactment.

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

ATTEST:

Brent Johnson, Assembly President

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

## Kenai Peninsula Borough Office of Emergency Management

## MEMORANDUM

TO:	Brent Johnson, Assembly President Members, Kenai Peninsula Borough Assembly
THRU:	Charlie Pierce, Mayor (P Brandi Harbaugh, Finance Director BH
FROM:	Brenda Ahlberg, Emergency Manager 🛛 🖁 🖁 🖁 🖁 🖁 🖁
DATE:	April 7, 2022
RE:	Ordinance 2021-19- <u>48</u> , Appropriating Supplemental Funding to Complete the Air Conditioner Unit Replacement Project Located in the Emergency Response Center Server Room (Mayor)

The Borough's approved FY 2022 budget appropriated \$25,000 to replace an air conditioning unit (A/C unit) located in the server room at the Emergency Response Center. This A/C unit is necessary to maintain a temperature-controlled environment for the effective operation of the server.

The total project costs exceed the original appropriation by approximately \$3,000. This is due to an increase in costs for the new equipment, which includes the labor for removal of the old system, site preparation, and installation of the new A/C unit.

This ordinance approves and appropriates supplemental funding in the amount of \$3,000 to complete this project. Your consideration of this ordinance is appreciated.

FINANCE DEPARTMENT FUNDS/ACCOUNT VERIFIED			
Account:	407.27910		
Amount:	\$_ <u>3,000</u>		
Ву: _ С	Je Date:	4/7/2022	

## MEMORANDUM

TO:	Brent Johnson, Assembly President Members of the Kenai Peninsula Borough Assembly
FROM:	Charlie Pierce, Kenai Peninsula Borough Mayor
DATE:	April 19, 2022
RE:	Appointment to the Seward Bear Creek Flood Service Area Board

In accordance with KPB16.50.80, appointments to the Kenai Peninsula Seward Bear Creek Floods Service Area Board are recommended by the Borough Mayor and confirmed by the Borough Assembly. The applicant is a registered voter and resides within the area to be represented. Attached for your review is the appointment request.

Appointment	<u>Board Seat</u>	<u>Term Expires</u>
Andy Bacon	F	October, 2022

Cc: Brenda Ahlberg, OEM Director Stephanie Presley, SBCFSA Program Lead, CFM Clerk's Office Kenai Peninsula Borough Office of the Borough Clerk

### MEMORANDUM

TO:	Charlie Pierce, Mayor
THRU:	Johni Blankenship, Borough Clerk (M) FRY JB . Michele Turner, Deputy Borough Clerk (M)
FROM:	Michele Turner, Deputy Borough Clerk $(\mathcal{V}\mu)$
DATE:	March 21, 2022
RE:	Seward Bear Creek Flood Service Area Board Application

A notice of vacancy for the Seward Bear Creek Flood Service Area Board was advertised on the borough's webpage, Facebook page and was posted in the borough administration building. The application period closed on March 18, 2022.

In accordance with to KPB 16.04.068, the applicant listed below has been verified as a qualified voter of the State of Alaska and a resident of the service area. The attached application is attached for your consideration.

<u>Applicant</u>	<u>Seat</u>	<u>Term Expires</u>
Andy Bacon	F	October, 2022
YOU. PUELSE	Appoint	
	-Li	

Thank you.

# Kenai Peninsula Borough Office of the Borough Clerk

#### Service Area Board Application Submitted 2022-03-09 13:28:56

#### Service Area: Seward Bear Creek Flood - Seat F (Term Expires 10/2022)

Applicant Name	Daytime Phone	
Andy Bacon	9073627719	
Email	Date of Birth	
andbacon2@yahoo.com		
Physical Residence Address	Mailing Address	
321 Sixth Avenue Seward, AK 99664	PO Box 314 Seward, Alaska 99664	
SS #	Voter#	
I have been a Resident of the Kenal Peninsula Borough for:	I have been a Resident of the selected Service Area for:	
15 years, 8 months	15 years, 8 months	
What knowledge, experience, or expertise will you bring to this board?		
I have been present in Seward during all the high water & flood events beginning with the 2006 Columbus Day flood, during which I was living in an affected area, and experienced evacuation and cleanup from that event. I am familiar with all the local drainages and problem areas in the Service Area through both spending time recreating here and by attending flood board meetings. As a City of Seward employee, I attended most flood board meetings during my tenure, so I'm familiar with current issues the board is working on (except the last calendar year, I'd need to go back and brush		

up on recent meetings). I've completed some FEMA trainings as a City of Seward employee, researched NFIP requirements and am familiar with the City's floodplain code. As a State Park employee, I filled out the multiagency application with the River Center for 3 different projects in the park. I have familiarity with all the agencies that deal with floodplain development and understand what their respective roles are. As of 2020 I became a property owner/business owner within the SMFDA and partially in a SFHA, so I have an interest in responsible floodplain development and flood mitigation. I know the difference between the SMFDA and the SFHA :). As a Flood Service Area community member, I have an interest in helping my friends neighbors mitigate flood risk and

loss of property through education and advocation of responsible floodplain development.

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#### Andy Bacon

#### PO Box 314 Seward, AK 99664 907-362-7719 <u>andbacon2@yahoo.com</u>

#### Education

BA in Political Science, BA in Economics, June 2004 University of California, Santa Cruz

#### Work Experience

Owner/operator- Steller Inn, 11952 Old Exit Glacier Road, Seward 01/2020- present

#### Planning Assistant – City of Seward 11/2017-3/2021

• Assists public with permitting and technical information regarding City land use code

• Evaluates City permits including building, floodplain development, conditional use, variance for compliance with City land use codes

• Acts as liaison to Planning and Zoning Commission, prepares meeting materials and records meeting minutes

#### Park Specialist – Alaska State Parks, Seward, Alaska 3/1/2015 – 10/31/2017

• Serves as the dispersed recreation manager for the daily operations and maintenance of the recreation facilities and trails in Resurrection Bay state parks

• Recruits, trains and supervises seasonal employees and volunteers

· Plans, prepares, and oversees maintenance and construction projects

• Writes and administers federal grants that fund park projects

• Assists park users with safety information and advises users on park regulations

#### Fish & Wildlife Tech III - Alaska Dept. of Fish & Game, Seward, Alaska

7/14/2010-2/28/2015 Permanent Seasonal

• Obtained biological samples of sport-caught halibut, rockfish & lingcod by collecting measurement, weight, sex & age structure data.

• Interviewed anglers, charter crew, and commercial fishermen to gather harvest and effort data

#### Aquarist- Alaska SeaLife Center, Seward, Alaska

Volunteer: 09/2006-05/2007 AmeriCorps: 09/2007-08/2008 Temp. full time: 09/2009-01/2010 Supervisor: Richard Hocking, Aquarium Curator 907-224-6300

· Cared for fishes and invertebrates, performed repair & maintenance of aquarium exhibits

• Interacted with aquarium visitors and led hour-long interactive talks about giant pacific octopus

#### Admission Coordinator, Trinity School, Menlo Park, CA 08/2004-06/2006

• Managed flow of new applicants from testing to enrollment utilizing hard copy files linked to an Excel spreadsheet

- Managed re-enrollment process and financial aid applications for student body of 148
- Presented weekly & prepared annual reports for school directors

Congressional Intern, Office of Congressman Sam Farr, Washington DC 09/2003-12/2003

- Performed legislative research & drafted responses to constituent mail
- Attended informational briefings in the Capitol and drafted summaries for legislative staff

#### Clubs and board memberships:

Seward Fish and Game Advisory Committee 2015-present, Secretary Kenai Mountains Turnagain Arm National Heritage Area Board 2021-present Rotary Club of Seward 2015-present, Past President 2020-2021 Kenai Peninsula Borough Office of the Borough Mayor

## MAYOR'S REPORT TO THE ASSEMBLY

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

FROM: Charlie Pierce, Kenai Peninsula Borough Mayor al Go CP

DATE: April 19, 2022

#### Assembly Request / Response

<u>None</u>

#### Agreements and Contracts

- A. Authorization to Award a Contract for RFP22-020 West Homer Elementary Water Infiltration to K+A designstudios, Kenai AK.
- B. Authorization to Award a Contract for ITB22-040 Purchasing & Contracting Storefront Remodel to Eberline Building, Inc., Soldotna, AK.
- C. Authorization to Award a Contract for RFP22-021 Access Controls to Johnson Controls, Anchorage, AK.
- D. Authorization to Award a Contract for ITB22-045 Central Peninsula Landfill Pond Liner Materials Purchase to Northwest Linings and Geotextile Products, Inc., Kent, WA.
- E. Sole Source Waiver To Crane Equipment Mfg. Corp., LLC

<u>Other</u>

<u>None</u>

# Kenai Peninsula Borough Purchasing & Contracting

#### MEMORANDUM

то:	Charlie Pierce, Mayor
THRU:	John D. Hedges, Purchasing & Contracting Director LF for JH
FROM:	Carmen Vick, Project Manager U
DATE:	March 24, 2022
RE:	Authorization to Award a Contract for RFP22-020 West Homer Elementary Water Infiltration

On February 24, 2022, the Kenai Peninsula Borough Purchasing & Contracting Department formally solicited proposals for RFP22-020 West Homer Elementary Water Infiltration. The request for proposals was advertised in the Peninsula Clarion and the Anchorage Daily News on February 23, 2022.

The project consists providing Professional Design Services (All Disciplines) for comprehensive inspection for damage due to water infiltration and to develop recommendations for all repairs and to address water infiltration.

On the due date of March 16, 2022, one (1) proposal was received and reviewed.

The proposal, which includes a cost factor, was submitted by K+A designstudios with a lump sum cost proposal of \$81,710.00. It is recommended that the award of a contract be issued to K+A designstudios of Kenai, Alaska. Your approval for this award is hereby requested.

Charlie Pierce

Charlie Pierce, Mayor

3/29/2022

Date

FINANCE DEP FUNDS VE	
Acct. No. <u>400.72051.SLF04</u>	.43011
Amount	
By:BH	3/26/2022 Date:
	<b>_</b>

**\$**81,710.00 is available in 400.72051.SLF04.43011.

# Kenai Peninsula Borough Purchasing & Contracting

#### MEMORANDUM

TO:	Charlie Pierce, Mayor	
THRU:	John Hedges, Purchasing & Contracting Director	JA and the sector and a case.
FROM:	I: Carmen Vick, Project Manager	
DATE:	: March 29, 2022	· 한국 · 전화 등 것 같아. 프로클
	Authorization to Award a Contract for ITB22-040 Purcha Storefront Remodel	
	Storefront Remodel	n a na na sana sanasa
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The Purchasing and Contracting Office formally solicited and received bids for the ITB22-040 Purchasing & Contracting Storefront Remodel. Bid packets were released on March 10, 2022 and the Invitation to Bid was advertised in the Peninsula Clarion on March 10, 2022.

The project consists of providing all labor and materials to reconfigure office area walls, replace carpeting and install transaction counters / enclosures per contract documents. Contractor will coordinate with owner representative regarding electrical & mechanical work completed by KPB Maintenance Department.

On the due date of March 23, 2022, two (2) bids were received and reviewed to ensure that all the specifications and delivery schedules were met. The low bid of \$99,998 was submitted by Eberline Building, Inc.

Your approval for this bid award is hereby requested. Funding for this project is in account number 407.94910.22473.49125.

Charlie Pierce

Charlie Pierce, Mayor

3/29/2022

Date

FINANCE DEPARTMENT FUNDS VERIFIED		
Acct. No. <u>407,94910</u>	.22473.49125	
Amount\$99,	998.00	
BV: CIF BH	3/29/2022 Date:	
_j-		

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#### KENAI PENINSULA BOROUGH PURCHASING & CONTRACTING

#### BID TAB FOR: ITB22-040 Purchasing & Contracting Storefront Remodel

CONTRACTOR	LOCATION	BASE BID
Eberline Building, Inc.	Söldotna, Álaska	\$99,998.00
Endries Company	Soldotna, Alaska	\$140,750.00
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DUE DATE: March 23, 2022

KPB OFFICIAL:

John Hedges, Purchasing & Contracting Director

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# Kenai Peninsula Borough Purchasing & Contracting

#### MEMORANDUM

TO:	Charlie Pierce, Mayor
THRU:	John D. Hedges, Purchasing & Contracting Director UF for JH
FROM:	Lee Frey, Project Manager
DATE:	March 24, 2022
RE:	Authorization to Award a Contract for RFP22-021 Access Control

On February 16, 2022, the Kenai Peninsula Borough Purchasing & Contracting Department formally solicited proposals for RFP22-021 Access Control. The request for proposals was advertised in the Peninsula Clarion and the Anchorage Daily News on February 16, 2022.

The project consists providing licensing, programming, set up and training services for 28 door Lenel access control system that has had the hardware and controllers installed.

On the due date of March 10, 2022, one (1) proposal was received and reviewed.

The proposal, which includes a cost factor, was submitted by Johnson Controls with a lump sum cost proposal of \$29,975.00. It is recommended that the award of a contract be issued to Johnson Controls of Anchorage, Alaska. Your approval for this award is hereby requested.

Funding of this contract will be charged to account number 407.94910.22474.43011.

Charlie Pierce

Charlie Pierce, Mayor

3/29/2022

Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No. <u>407.94910.22474.43011</u>	
Amount\$29,975.00	
By: BH Date	3/26/2022

NA

## Kenai Peninsula Borough Solid Waste Department

#### MEMORANDUM

**TO:** Charlie Pierce, Mayor

- THRU: John Hedges, Purchasing & Contracting Director JH
- FROM: Lee Frey, Solid Waste Director
- **DATE:** April 6, 2022
- **RE:** Authorization to Award a Contract for ITB22-045 Central Peninsula Landfill Pond Liner Materials Purchase

The Purchasing and Contracting Office formally solicited and received bids for the ITB22-045 Central Peninsula Landfill Pond Liner Materials Purchase. Bid packets were released on March 11, 2022, and the Invitation to Bid was advertised in the Peninsula Clarion and the Anchorage Daily News on March 11, 2022.

The project consists of purchasing pond liner materials.

On the due date of March 31, 2022, four (4) bids were received and reviewed to ensure that all the specifications and delivery schedules were met. The low bid of \$296,277.50 was submitted by Northwest Linings and Geotextile Products, Inc. of 20824 77<sup>th</sup> Ave SW, Kent, WA 98032.

Your approval for this bid award is hereby requested. Funding for this project is in account number 411.32122.SLF02.48630.

Charlie Pierce, Mayor

4/7/2022

Date		
FINANCE DEPARTMENT FUNDS VERIFIED		
Acct. No. <u>411.32122.5LF02.48630</u>		
Amount <u>\$296.277.50</u> By: Bff Date: 4/6/2022 NOTES: NA		

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## KENAI PENINSULA BOROUGH PURCHASING & CONTRACTING

#### BID TAB FOR: ITB22-045 Central Peninsula Landfill Pond Liner Materials

CONTRACTOR		BASE BID
Northwest Linings and Geotextile Products, Inc.	Kent, Washington	\$296,277.50
NorthStar Supply LLC	Palmer, Alaska	\$302,197.50
Cascade Geosynthetics	Portland; Oregon	\$371,823.80*
Dayaq Construction, LLC	Anchorage, Alaska	\$398;675.00
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		and the second sec

DUE DATE: March 31, 2022

KPB OFFICIAL:

John Hedges, Purchasing & Contracting Director

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# Kenai Peninsula Borough Solid Waste Department

## MEMORANDUM

TO:	Charlie Pierce, Mayor
THRU:	John Hedges, Purchasing & Contracting Director 🦷 州
FROM:	Lee Frey, Solid Waste Director LF
DATE:	April 4, 2022
RE:	Crane Equipment Mfg. Corp. LLC Sole Source Waiver

The Kenai Peninsula Borough Solid Waste Department would like to obtain a sole source to purchase replacement crane repair parts from Crane Equipment Mfg. Corp. We request this sole source for the crane manufacturer to provide parts for needed maintenance on the Homer Transfer Facility crane.

The purchase is time sensitive because this piece of equipment is vital for everyday transfer facility functions.

We request approval for this purchase. Funding for this project is in account number 290.32310.42310 in the amount of \$39,000.00.

APPROVED: <

Charlie Pierce, Mayor

DATE:	4/7/2022

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 watersaturated 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.

<u>Assisted living home means a residential facility that serves three or more</u> 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. 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.

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

<u>Disturbed includes active excavation and all areas necessary to use a parcel</u> 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.

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

*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.

<u>Permit area</u> 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 21.25 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. <u>Surface water protection measures, if any, for adjacent properties</u> <u>designed by a civil engineer, including the use of diversion channels,</u> <u>interception ditches, on-site collection ditches, sediment ponds and</u> <u>traps, and silt fence;</u>
- 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] <u>elevation</u> of test holes, and depth of groundwater, if encountered <u>between May and December</u>. <u>At least one test hole per ten acres of excavated area is</u> <u>required to be dug. The test holes shall be at least four feet</u> <u>below the proposed depth of excavation;</u>
  - 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]<u>i</u>. Location of any processing areas on parcel, if applicable;
- [K]j. North arrow;
- [L]<u>k</u>. The scale to which the site plan is drawn;
- [M]<u>l</u>. Preparer's name, date and seal;
- [N]<u>m</u>. 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 <u>or staking is unnecessary</u>.
- B. In order to aid the planning commission or planning director's decisionmaking 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] <u>Protects against off-site movement of dust;</u>
  - 4. [MINIMIZES] <u>Protects against</u> 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]<u>Permit</u> boundaries.* [ALL BOUNDARIES OF THE SUBJECT PARCEL] <u>The buffers and any easements or right-of-way abutting the</u> <u>proposed permit area</u> 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.
  - <u>c.</u> Where an easement exists, a buffer shall not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable.
  - <u>d.</u> <u>The vegetation and fence shall be of sufficient height and</u> <u>density to provide visual and noise screening of the proposed</u>

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] <u>four</u>-foot vertical separation [FROM]<u>between</u>

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] <u>200</u> linear feet from <u>excavation limits and the ordinary high water level</u> <u>of surface water bodies such as</u> 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.]
  - <u>a.</u> <u>Processing equipment shall not be operated between 7:00 p.m.</u> 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.
- Other permits. Permittee is responsible for complying with all other 13. 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]<u>Volunteered</u> 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] <u>Volunteered</u> permit

conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in [VOLUNTARY] <u>volunteered</u> permit conditions may be proposed [AT] <u>by</u> permit [RENEWAL OR AMENDMENT] <u>modification</u>.

- 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. <u>Appeal.</u> 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.
- <u>17.</u> 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. <u>Ten dB(A) for a total of five minutes in any hour; or</u>
    - <u>iii.</u> 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.
  - <u>d.</u> <u>Mandatory condition KPB 21.29.050(A)(17) shall expire 365</u> <u>days from adoption of KPB 21.29.050(A)(17) unless extended</u> <u>or modified by the assembly.</u>

- 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. <u>Groundwater elevation</u>. All material sites must maintain one monitoring tube per ten acres of excavated area four feet below the proposed excavation.
- 23. <u>Setback.</u> 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 <u>an overall</u> reclamation plan <u>along with a five-year reclamation plan</u>. <u>A site plan for reclamation shall</u> <u>be required including a scaled drawing with finished contours</u>. A five-year <u>reclamation plan must be submitted with a permit extension request</u>.
- The applicant shall revegetate with a non-invasive plant species and reclaim Β. 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 <u>the</u> [PREPARING] <u>preparation, approval</u> and [IMPLEMENTING] <u>implementation of</u> 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]<u>T</u>opsoil mine operations shall ensure a minimum of [TWO] <u>four</u> 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 <u>five-year reclamation</u> 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.

- Material sites are not held to the standards and conditions of a CLUP if a 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. <u>The planning department may request proof of continued</u> <u>compliance with AS 27.19.030 – 050 on an annual basis.</u>
- 2. Pursuant to KPB 21.29.110 the enforcement process and remedies set forth in KPB 21.50 shall govern if the proof that the statutory requirements contained in AS 27.19.030-050 is not provided to the planning department.

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

## 21.50.055. Fines.

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

CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
KPB 20.10.030(A)	Offering land for sale without final plat approval	\$300.00
KPB 20.10.030(B)	Filing/recording unapproved subdivision/plat	\$300.00
KPB 20.10.030(C)	Violation of subdivision code or condition	\$300.00
KPB 21.05.040(C)	Violation of variance conditions	\$300.00
KPB 21.06.030(D)	Structure or activity prohibited by KPB 21.06	\$300.00
KPB 21.06.040	Failure to obtain a Development Permit/Floodplain Management	\$300.00
KPB 21.06.045	Failure to obtain a SMFDA Development Permit/Violation of SMFDA permit conditions/Floodplain Management	\$300.00
KPB 21.06.050	Violation of permit conditions/Floodplain Management	\$300.00
KPB 21.18.071	Failure to obtain staff permit/Violation of staff permit/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.072	Failure to obtain limited commercial activity permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.075	Prohibited use or structure/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.081	Failure to obtain Conditional Use Permit/Violation of Conditional Use Permit Condition/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.090	Failure to obtain prior existing use/structure permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.135(C)	Violation of emergency permit conditions/anadromous stream habitat protection	\$300.00

CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
KPB 21.25.040	Failure to Obtain a Permit/Material Site/Correctional community residential center/Concentrated Animal Feeding Operation	\$300.00
KPB 21.28.030	Violation of permit conditions/Concentrated Animal Feeding Operations	\$300.00
KPB 21.29.020	Failure to Obtain a counter permit/Material Site Permits	\$300.00
KPB 21.29.050	Violation of Conditional Land Use Permit Conditions/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
KPB 21.29.060	Violation of Reclamation Plan/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
<u>KPB 21.29.120</u>	Failure to Provide Reclamation Plan and Proof of Bonding or Letter of Intent	<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
КРВ 21.44.135	Failure to file development notice	\$300.00
KPB 21.44.160(A)(B)	Prohibited use	\$300.00

CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
KPB 21.44.160(C)	Violation of Development Standards/Single Family Zoning/Local Option Zoning	\$300.00
KPB 21.44.165(A)(B)	Prohibited use	\$300.00
KPB 21.44.165(C)	Violation of Development Standards/Small Lot Residential Zoning/Local Option Zoning	\$300.00
KPB 21.44.170(A)(B)	Prohibited use	\$300.00
KPB 21.44.170(C)	Violation of Development Standards/Rural Residential District/Local Option Zoning	\$300.00
KPB 21.44.175(B)(C)	Prohibited Use	\$300.00
KPB 21.44.175(D)	Violation of Development Standards/Residential Waterfront	\$300.00
KPB 21.44.180(A)(B)	Prohibited Use	\$300.00
KPB 21.44.180(C)	Violation of Development Standards/Multi-Family Residential District/Local Option Zoning	\$300.00
KPB 21.44.190(A)(B)	Prohibited Use	\$300.00
KPB 21.44.190(C)	Violation of Development Standards/Industrial District/Local Option Zoning	\$300.00
KPB 21.46.030(b)	Failure to maintain bear-resistant garbage cans/Local option zone/Birch and Grove Ridge subdivisions Rural Residential District	\$300.00
KPB 21.50.100(F)	Removal of posted enforcement notice	\$300.00
KPB 21.50.100(G)	Violation of enforcement notice	\$1,000.00
KPB 21.50.130(I)	Violation of an enforcement order	\$1,000.00

**SECTION 4.** That this ordinance shall become effective upon its enactment.

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

ATTEST:

Brent Johnson, Assembly President

Johni Blankenship, MMC, Borough Clerk

Yes: Bjorkman, Derkevorkian, Elam, Tupper, Johnson

No: Chesley, Cox, Ecklund

Absent: Hibbert

## Kenai Peninsula Borough Assembly

[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.]

## MEMORANDUM

- **TO:**Brent Johnson, Assembly President<br/>Members, Kenai Peninsula Borough Assembly
- **FROM:** Bill Elam, Assembly Member  $\mathcal{BE}$
- **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)

[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 condtions under KPB 21.29.050 that the following standards are met:
  - I.[Protects against the lowering of water sources serving other<br/>properties;]The use is not inconsistent with the applicable comprehensive<br/>plan;
  - 2. [Protects against physical damage to [other] adjacent properties;] The use will preserve the value, spirit, character, and integrity of the surrounding area;

Page 2 of 2 Date: January 18, 2022 RE: Elam Amendment #2 to O2021-41

- 3. [[Minimizes] <u>Protects against off-site movement of dust;</u>] <u>The applicant has met all other requirements of this chapter</u> <u>pertaining to the use in question;</u>
- 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
- [[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. <u>Protects Receiving Waters against adverse effects to fish and</u> <u>wildlife habitat;</u>]
- [<u>8. Protects against traffic impacts; and]</u>
- [<u>9. Provides consistency with the objectives of the Kenai Peninsula</u> <u>Borough Comprehensive Plan and other applicable planning</u> <u>documents.</u>]

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

## MEMORANDUM

- TO: Brent Johnson, Assembly President Members, Kenai Peninsula Borough Assembly
- **FROM:** Cindy Ecklund, Assembly Memk Mike Tupper, Assembly Member M<sup>+</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. <u>Buffer Area. Material sites shall maintain buffer areas in accord</u> with this section.

Clerk's Note: This amendment was approved at the 01/18/22 meeting. 8 Yes, 0 No, 1 Absent

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. 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. <u>Buffer Area. Material sites shall maintain buffer areas in accord</u> 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 roise 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. <u>Buffer Area. Material sites shall maintain buffer areas in accord</u> 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 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: Substitute Introduced: O2021-41 (Mayor, Johnson) Action: Vote: Elam, Derkevorkian 02/01/22 See Original Ordinance for Prior History

#### 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, projectspecific 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 watersaturated 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.

<u>Assisted living home means a residential facility that serves three or more</u> 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. 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.

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

<u>Permit area includes all excavation, processing, buffer and haul route areas</u> 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 21.25 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. <u>Surface water protection measures, if any, for adjacent properties</u> <u>designed by a SWPPP certified individual, including the use of</u> <u>diversion channels, interception ditches, on-site collection ditches,</u> <u>sediment ponds and traps, and silt fence;</u>
- 9. A site plan <u>prepared by the site operator</u> 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] <u>elevation</u> of test holes, and depth of groundwater, if encountered <u>between May and December</u>. 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] <u>200</u> 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]<u>i</u>. Location of any processing areas on parcel, if applicable;
- [K]j. North arrow;
- [L]<u>k</u>. The scale to which the site plan is drawn;
  - [M]l. Preparer's name, date
- [N]<u>m</u>. 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 <u>or staking is unnecessary</u>.
- B. In order to aid the planning commission or planning director's decisionmaking 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] <u>Minimizes</u> the lowering of water sources serving other properties;
  - 2. [PROTECTS AGAINST] <u>Minimizes</u> 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 postmining 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*]<u>*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.</u>
  - [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. <u>A 2:1 slope shall be maintained between the buffer zone and excavation floor on all inactive site walls</u>. 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 sixfoot 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.

- <u>d.</u> 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] <u>an</u> <u>excavation distance a maximum of 15 feet below the seasonal</u> <u>high-water table must be maintained under these conditions:</u>
    - 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 aquiferconfining 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. <u>Double wall tanks are also acceptable.</u>

- 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.] <u>The applicant shall operate the</u> 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.

- Other permits. Permittee is responsible for complying with all other 13. 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]<u>Volunteered</u> 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] <u>Volunteered</u> permit conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in [VOLUNTARY] <u>volunteered</u> permit conditions may be proposed [AT] <u>by</u> permit [RENEWAL OR AMENDMENT] <u>modification</u>.
- 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. <u>Appeal.</u> 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 <u>an overall</u> reclamation plan.
- B. The applicant <u>may</u> 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 <u>the</u> [PREPARING] <u>preparation, approval</u> and [IMPLEMENTING] <u>implementation of</u> 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] <u>four</u> 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 in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.
- F. Failure to submit a request for extension will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KPB 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.
- G. Permits may be revoked pursuant to KPB 21.50.

#### 21.29.080. Permit termination.

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

## 21.29.090. Permit modifications.

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

## 21.29.100. Recordation.

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

#### 21.29.110. Violations.

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

#### 21.29.120. Prior existing uses.

A. Material sites are not held to the standards and conditions of a CLUP if a prior existing use (PEU) determination was granted for the parcel in accordance with KPB 21.29.120(B). To qualify as a PEU, a parcel's use as a material site must have commenced or have been operated after May 21, 1986, and prior to May 21, 1996, provided that the subject use continues in the same location. In no event shall a prior existing use be expanded beyond the smaller of the lot, block, or tract lines as they existed on May 21, 1996. If a parcel is further subdivided after May 21, 1996, the pre-existing use may not be expanded to any lot, tract, or parcel where extraction had not occurred before or on February 16, 1999. If a parcel is subdivided where extraction has already occurred, the prior existing use is considered

abandoned, and a CLUP must be obtained for each parcel intended for further material site operations. The parcel owner may overcome this presumption of abandonment by showing that the subdivision is not inconsistent with material site operation. If a parcel subject to a prior existing use is conveyed, the prior existing use survives the conveyance.

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

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

- 1. The planning department may request proof of continued compliance with AS 27.19.030 050 on an annual basis.
- 2. Pursuant to KPB 21.29.110 the enforcement process and remedies set forth in KPB 21.50 shall govern if the proof that the statutory requirements contained in AS 27.19.030-050 is not provided to the planning department.

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

## 21.50.055. Fines.

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

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

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

CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
KPB 21.44.130(C)(D)	Violation of Home Occupation Standards and Conditions/Local Option Zoning	\$300.00
KPB 21.44.130(F)	Disallowed Home Occupation/Local Option Zoning	\$300.00
KPB 21.44.135	Failure to file development notice	\$300.00
KPB 21.44.160(A)(B)	Prohibited use	\$300.00
KPB 21.44.160(C)	Violation of Development Standards/Single Family Zoning/Local Option Zoning	\$300.00
KPB 21.44.165(A)(B)	Prohibited use	\$300.00
KPB 21.44.165(C)	Violation of Development Standards/Small Lot Residential Zoning/Local Option Zoning	\$300.00
KPB 21.44.170(A)(B)	Prohibited use	\$300.00
KPB 21.44.170(C)	Violation of Development Standards/Rural Residential District/Local Option Zoning	\$300.00
KPB 21.44.175(B)(C)	Prohibited Use	\$300.00
KPB 21.44.175(D)	Violation of Development Standards/Residential Waterfront	\$300.00
KPB 21.44.180(A)(B)	Prohibited Use	\$300.00
KPB 21.44.180(C)	Violation of Development Standards/Multi-Family Residential District/Local Option Zoning	\$300.00
KPB 21.44.190(A)(B)	Prohibited Use	\$300.00
KPB 21.44.190(C)	Violation of Development Standards/Industrial District/Local Option Zoning	\$300.00

CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
KPB 21.46.030(b)	Failure to maintain bear-resistant garbage cans/Local option zone/Birch and Grove Ridge subdivisions Rural Residential District	\$300.00
KPB 21.50.100(F)	Removal of posted enforcement notice	\$300.00
KPB 21.50.100(G)	Violation of enforcement notice	\$1,000.00
KPB 21.50.130(I)	Violation of an enforcement order	\$1,000.00

**SECTION 4.** That this ordinance shall become effective upon its enactment.

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

ATTEST:

Brent Johnson, Assembly President

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

## Kenai Peninsula Borough Planning Department

## MEMORANDUM

TO:	Brent Johnson, Assembly President Members, Kenai Peninsula Borough Assembly
THRU:	Charlie Pierce, Mayor U
FROM:	Melanie Aeschliman, Planning Director MA
DATE:	November 23, 2021
SUBJECT:	Ordinance 2021- <u>4</u> ] Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures (Mayor)

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

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

Your consideration of these amendments is appreciated.

## MEMORANDUM

- **TO:**Blair Martin, Planning Commission Chair<br/>Members, Kenai Peninsula Borough Planning Commission
- THRU: Melanie Aeschliman, Planning Director Mit Samantha Lopez, River Center Manager Sy
- FROM: Bryan Taylor, Planner 87
- DATE: November 17, 2021
- **RE:** Reintroduction of Ordinance 2019-30 SUB; An Ordinance Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures

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

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

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Date: November 17, 2021

- To: Blair Martin, Planning Commission Chair Members, Kenai Peninsula Borough Planning Commission
- RE: Reintroduction of Ordinance 2019-30 SUB; An Ordinance Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures

key staff and commissioners could be present.

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

# Kenai Peninsula Borough Legal Department

## MEMORANDUM

TO:	Brent Johnson, Assembly president Members, Kenai Peninsula Borough Assembly
FROM:	A. Walker Steinhage, Deputy Borough Attorney 🛯 🖉 🖉 Sean Kelley, Borough Attorney 🕏
CC:	Charlie Pierce, Mayor Melanie Aeschliman, Planning Director
DATE:	January 14, 2022
RE:	Questions for the Assembly to consider regarding Ordinance 2021-41

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 <u>shall approve</u> permit applications that meet all the mandatory conditions under KPB 21.29.050 and <u>shall</u> <u>disapprove</u> 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 whenO2019-30 was originally considered

New Text Underlined; [DELETED TEXT BRACKETED]

## APPENDIX A KPB/Matanuska-Susitna Borough

KPB 21.29.040. Standards for sand, gravel or material sites. (As proposed in O2021-41)	MSB 17.30.060 General Standards for Approval
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] adjacent properties;	<ul> <li>(2) that the use will preserve the value, spirit, character, and integrity of the surrounding area;</li> </ul>
3. [MINIMIZES] <u>Protects against off-site</u> 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 17.30.050(B).
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.	

### APPENDIX B KPB/Ketchikan Gateway Borough

KPB 21.29.040. Standards for sand, gravel or	KGB Code 18.55.050
material sites. (As proposed in O2021-41)         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;	<ul> <li>(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:</li> <li>(1) The requested conditional use is</li> </ul>
2. Protects against physical damage to [OTHER] adjacent properties;	reasonably necessary for the public health, safety, and general welfare; and
3. [MINIMIZES] <u>Protects against off-site</u> 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. Protects Receiving Waters against adverse effects to fish and wildlife habitat;	
8. Protects against traffic impacts; and	
<u>9. Provides consistency with the objectives</u> of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.	

### APPENDIX C KPB/KODIAK ISLAND BOROUGH

KPB 21.29.040. Standards for sand, gravel or material sites. (As proposed in O2021-41)	KIB 17.200.050 General Standards for Approval <sup>2</sup>
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. Approval. 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] adjacent 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 off-site</u> 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 (A)(1) through (3) 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[.];	
7. Protects Receiving Waters against adverse effects to fish and wildlife habitat;	
8. Protects against traffic impacts; and	
<u>9. Provides consistency with the objectives</u> of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.	

<sup>&</sup>lt;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

KPB 21.29.040. Standards for sand, gravel or material sites. (As proposed in O2021-41)	FNSB 18.104.050 Procedures for conditional uses.
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 off-site</u> 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. 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.	

# Kenai Peninsula Borough Legal Department

## 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

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 1/2-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 Page -2-

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 Page -3-

- 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".
- 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.
- 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 Page -4-

- 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.
- 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 Page -5-

- 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

From:	Hans Bilben <catchalaska@alaska.net></catchalaska@alaska.net>
Sent:	Tuesday, February 8, 2022 6:12 PM
То:	Blankenship, Johni
Subject:	<external-sender>Info for 2/15/22 Committee of the Whole (Material Site</external-sender>
	Ordinance)

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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,

Hans Bilben Anchor Point

### Broyles, Randi

From:	Hans Bilben <catchalaska@alaska.net></catchalaska@alaska.net>
Sent:	Wednesday, February 9, 2022 10:52 AM
То:	Blankenship, Johni
Subject:	<external-sender>Supporting Documents for proposed material site amendments.</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.

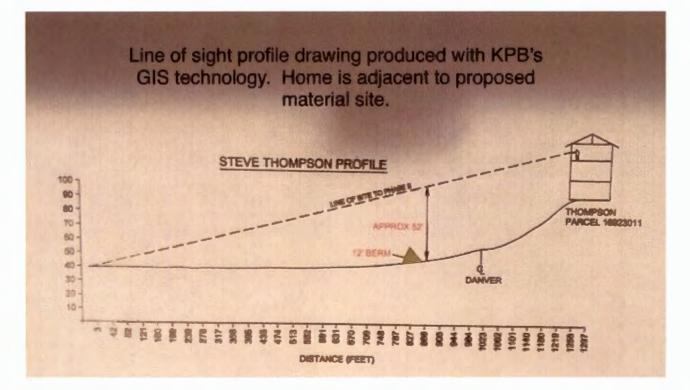
Hi Johni,

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,

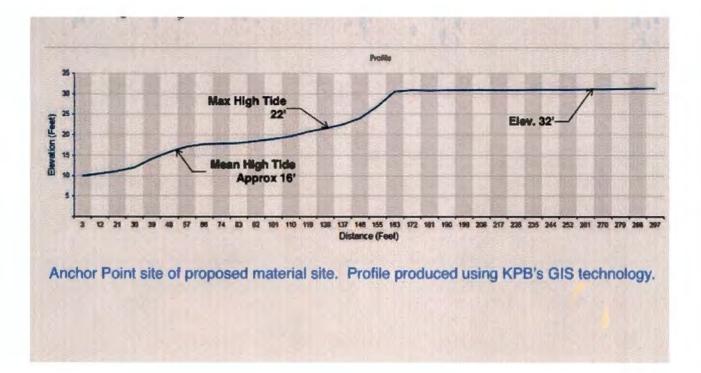
Hans Bilben

Document in support of proposed amendment 21.29.050 (A)(2)(b) Buffer Area.



Documents in support of proposed amendment 21.29.050 (A)(6)(c)





#### 8-37 AM Wed Feb 9

.... sms-tsunami-warning.com li P 100% MM

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 voicined water is the second key environment al impact of a trumont samuelon of water bodies such as rivers, wells, inland lakes, and individer aquillers can occur in most cases. This also affects the soil fert Bity of agricultural lends of a to salmation and debris contamination which will affect yields in the medium and long term. Sewage, septic tanks and toilets are damaged contaminating the water

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. loose 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

From:	Hans Bilben <catchalaska@alaska.net></catchalaska@alaska.net>
Sent:	Tuesday, February 8, 2022 6:00 PM
То:	Blankenship, Johni
Cc:	Aeschliman, Melanie; Kelley, Sean; Chesley, Lane
Subject:	<external-sender>Material Site Ordinance Amendments</external-sender>
Attachments:	Standard #1 Amendment.pages; CLUP Category Amendment.pages; Buffer Area amendments.pages; Waterbody Amendments.pages

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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. <u>A buffer area shall be established between the area of excavation and the parcel boundaries</u>. 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 Areamaybe 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 <u>**not**</u> 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.*] <u>CLUPs</u> 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.

# 2. 21.29.050 (A) Permit Conditions.

A. The following mandatory conditions apply to counter permits, [*CLUPs*] **<u>Class 1</u> <u>CLUPs</u>**, and Class 2 CLUPs</u> issued for sand, gravel, or material sites:

# 3. 21.29.050 (A)(3) Permit Conditions

3. Processing. In the case of a [*CLUP*] <u>Class 1 (processing)</u> <u>CLUP</u>, any equipment which conditions or processes material must be operated at least [300] <u>500</u> feet from the parcel boundaries. At its discretion, the planning commission may waive the [300] <u>500</u> 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 hatted, 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 gavel 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 outery 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, Al:aska 99603

### **Broyles**, Randi

From:	BI
Sent:	W
То:	Br
Subject:	F۷

lankenship, Johni Vednesday, January 26, 2022 11:54 AM royles, Randi W: <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

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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 <<u>dlconst.smith@gmail.com</u>> Date: Wed, Jan 26, 2022 at 11:47 AM Subject: KPB Ordinance 2021 - 41 To: <<u>bjohnson@kpb.us</u>>, <<u>bhibbert@kpb.us</u>>, <<u>rderkevorkian@kpb.us</u>>, <<u>jbjorkman@kpb.us</u>>, <<u>tysoncox@kpb.us</u>>, <<u>belam@kpb.us</u>>, <<u>cecklund@kpb.us</u>>, <<u>lchesley@kpb.us</u>>, <<u>mtupper@kpb.us</u>>, Pierce, Charlie <<u>cpierce@kpb.us</u>>, Kpac Association <<u>kpacassociation@yahoo.com</u>>

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 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 **<u>guality</u>**, 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 advise 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 Ilc, 362-7142 Randy Chumley, A&L Construction, 398-3048 Sean McKeown, Knik Construction, 907-545-3637

02021-41

From: K, E, & E Martin <<u>keeconstructionllc@yahoo.com</u>>
Sent: Sunday, January 30, 2022 12:14 PM
To: Pierce, Charlie <<u>CPierce@kpb.us</u>>; Planning Dept, <<u>planning@kpb.us</u>>; Kelley, Sean
<<u>skelley@kpb.us</u>>; Blankenship, Johni <<u>JBlankenship@kpb.us</u>>
Subject: Fw: <EXTERNAL-SENDER>The Doctrine of Estoppel

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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 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 conducted 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

Comments on KPB materials site revisions

January 6, 2022

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 permittable" 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 microrganisms 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. Unter

James A. Munter, CPG Certified Ground Water Professional No. 119481 Alaska Licensed Professional Geologist No. 568 Comments on KPB materials site revisions Fage 4 of 4

January 6, 2022

### **Turner, Michele**

Subject:	FW: <external-sender>Fw: DEC Drinking Water regulations related to gravel</external-sender>
Attachments:	extraction image001.png

From: Kpac Association <<u>kpacassociation@yahoo.com</u>> Sent: Thursday, January 20, 2022 2:08 PM To: G\_Notify\_AssemblyClerk <<u>G\_Notify\_AssemblyClerk@kpb.us</u>> 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) <<u>charley.palmer@alaska.gov</u>>
 To: <u>kpacassociation@yahoo.com</u> <<u>kpacassociation@yahoo.com</u>>
 Cc: Rypkema, James (DEC) <<u>james.rypkema@alaska.gov</u>>; Miller, Christopher C (DEC) <<u>chris.miller@alaska.gov</u>>
 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, <u>18 AAC 80</u>. For that reason, we did work with the Division of Water to update a Best Management Practices document found at <u>https://dec.alaska.gov/water/wastewater/stormwater/gravel/</u>, 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 aboveground 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

555 CORDOVA STREET

ANCHORAGE, AK 99501

### **Turner**, Michele

Subject:

FW: <EXTERNAL-SENDER>Fw: Gravel pits with waterbodies

From: Kpac Association <<u>kpacassociation@yahoo.com</u>> Sent: Thursday, January 20, 2022 2:11 PM To: G\_Notify\_AssemblyClerk <<u>G\_Notify\_AssemblyClerk@kpb.us</u>> 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) <<u>ryan.peterson@alaska.gov</u>> To: Kpac Association <<u>kpacassociation@yahoo.com</u>> Cc: Wilfong, David L (DEC) <<u>david.wilfong@alaska.gov</u>>; Bear, Tonya (DEC) <<u>tonya.bear@alaska.gov</u>> 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, <u>david.wilfong@alaska.gov</u>, 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 Phone: 907-262-3402 Fax: 907-262-2294 septic.alaska.gov

-----Original Message-----From: Kpac Association <<u>kpacassociation@yahoo.com</u>>

1

Sent: Friday, January 7, 2022 7:24 AM To: Peterson, Ryan E (DEC) <<u>ryan.peterson@alaska.gov</u>> Subject: Gravel pits with waterbodies

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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: Attachments: FW: <EXTERNAL-SENDER>Fw: [External Email]Info on gravel pit habitat 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 <<u>kpacassociation@yahoo.com</u>> Sent: Thursday, January 20, 2022 2:03 PM To: G\_Notify\_AssemblyClerk <<u>G\_Notify\_AssemblyClerk@kpb.us</u>> 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 <<u>adam.cross@usda.gov</u>> To: Kpac Association <<u>kpacassociation@yahoo.com</u>> 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 <u>adam.cross@usda.gov</u> 33599 Ranger Station Spur Seward, AK 99664 www.fs.fed.us

Caring for the land and serving people

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

From: Kpac Association <<u>kpacassociation@yahoo.com</u>> Sent: Thursday, January 6, 2022 10:52 AM To: Cross, Adam -FS <<u>adam.cross@usda.gov</u>> Subject: [External Email]Info on gravel pit habitat

[External Email]

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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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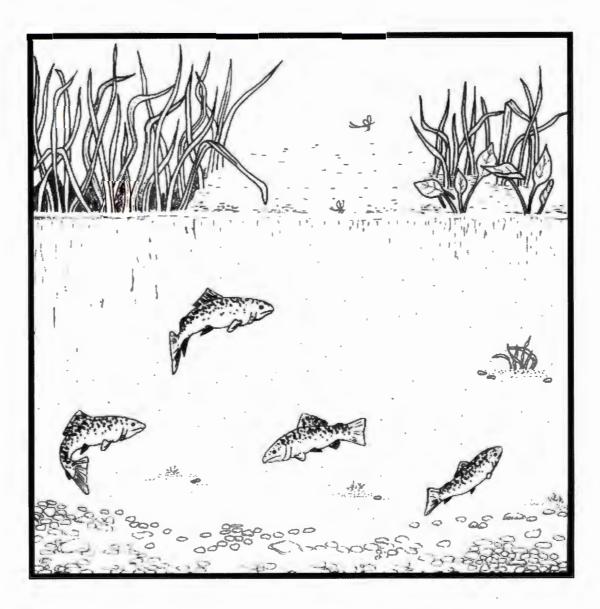
Report

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 frequentcies 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 Introduction
- 1 Methods
- 2 Results
- 8 Discussion
- 10 Literature Cited

Carlo Car

# 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 kitsuch) are aggressive, invasive, and mobile (Allee 1974, Chapman 1962, Skeesick 1970). Sheridan 1 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).

<sup>&</sup>lt;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>&</sup>lt;sup>2</sup> Sanders, G.H. Movement and territoriality in juvenile coho salmon (*On-corhynchus 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 measure ments. 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).

The number of coho salmon in Nine-Mile and Beanbelly Ponds increased from July **Results** 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.

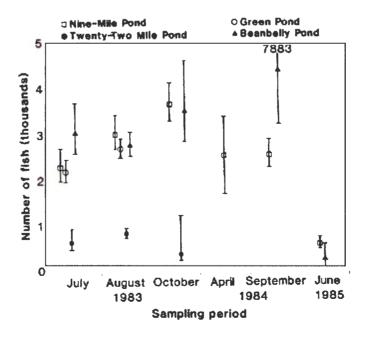


Figure 1-Population estimates of coho salmon captured in Nine-Mile, Green, Twenty- Two-Mile, and Beanbelly Ponds from 1983 to 1985. , **'1** 7 32 9 . 7



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.

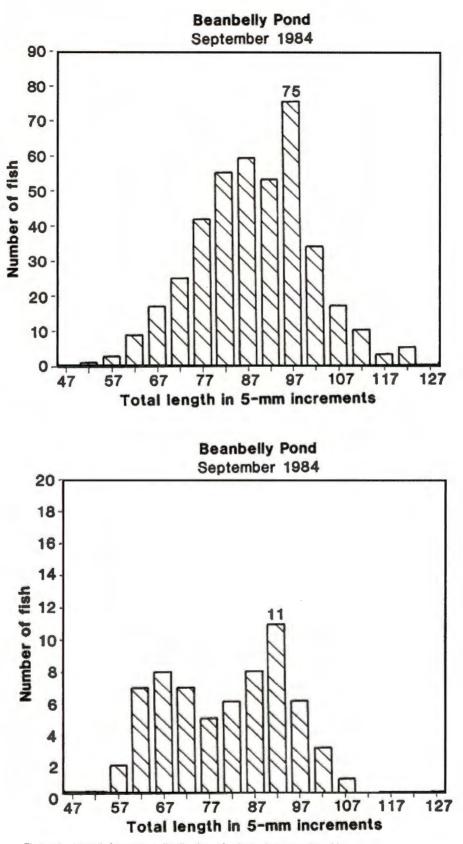


Figure 2—Length frequency distribution of coho salmon captured in Beanbelly Pond in September 1984 and June 1985.

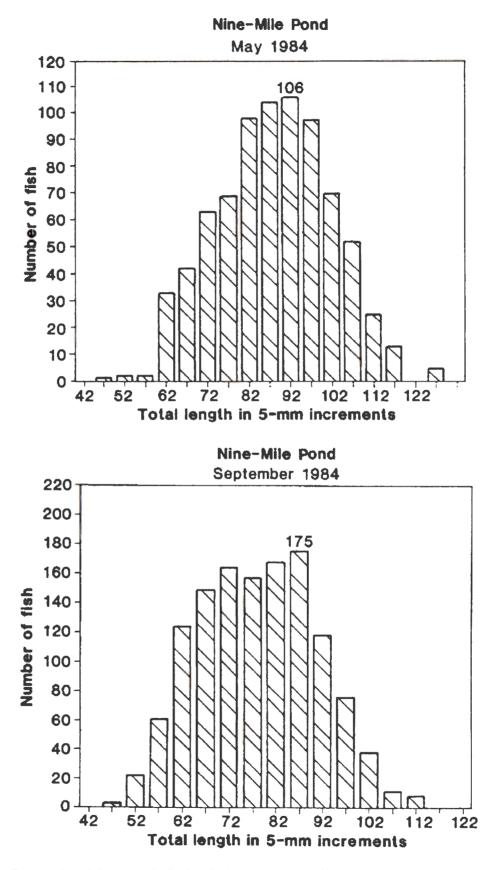


Figure 3—Length frequency distribution of coho salmon captured in Nine-Mile Pond in May and September 1984.

Date	Intercept a	Slope b	Significance	
and				
pond			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	things have			
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	(manufacture)			

Table 1-Differences among ponds in length-weight regressions

## Table 2—Yakutat gravel pit ponds morphology

	Area	Volumeª	Maximum depth	Average depth <sup>b</sup>
Square meters		Cubic meters	<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

a Volume = area times average depth.

b 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 a thick layer of ice formed.

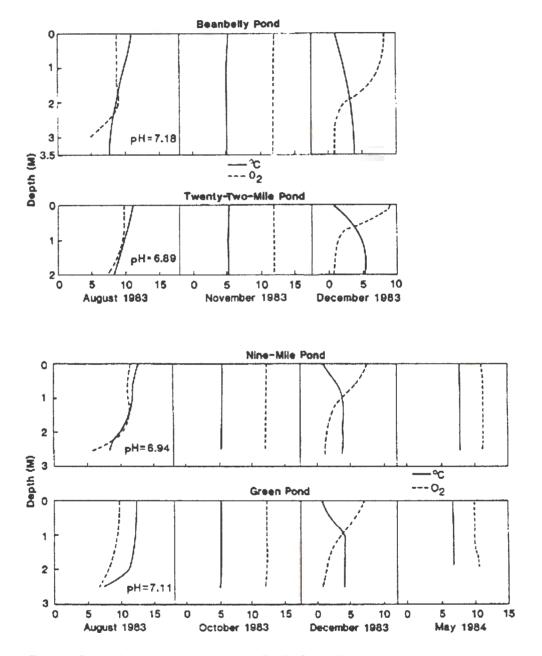


Figure 4—Seasonal temperature and oxygen profiles for Green, Nine-Mile, Twenty- Two-Mile, and Beanbelly Ponds.

#### 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 lengthweight 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 invertebrates 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.

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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.

Site Planning:

To design and execute the fill disposal





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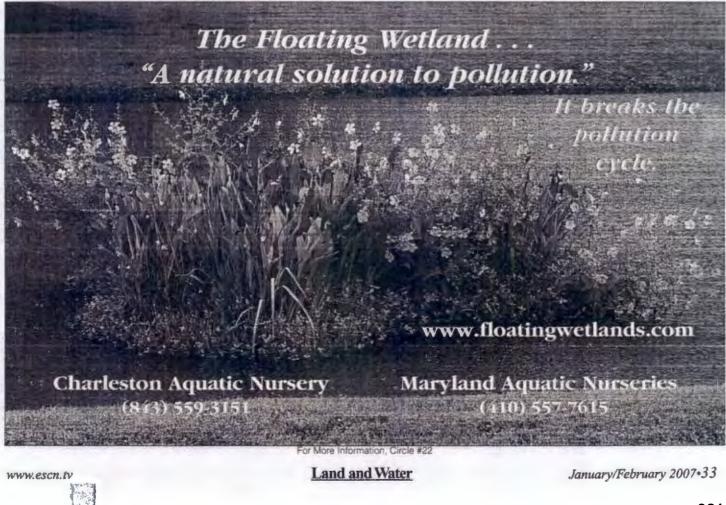
and wetland enhancement project, the CBJ contracted the engineering firms Toner-Nordling Associates for the initial fill design and R&M Engineering, Inc. for the design development of the filling process. Glacier State Contractors, Inc. executed the design. To maintain flow through Duck Creek, a stream 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



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. **LEW** 

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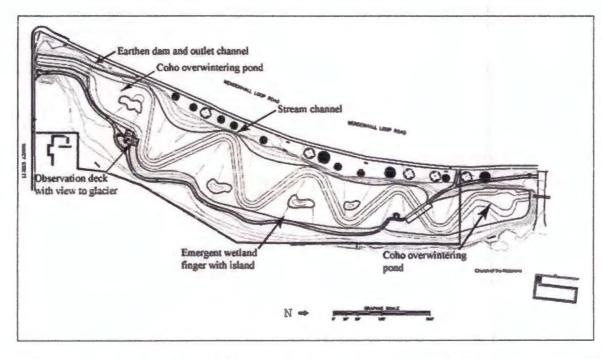
#### WETLANDS

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 tric 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 plantir work was done by hand using shovel bulb planters, and pulaskis.

#### Lessons Learned:

To improve the revegetation proces for future projects, better planning for



irrigation should be i place prior to trans planting. As mer tioned earlier, the day was constructed after the completion of th planting of th emergent vegetation Revegetation occurre between the months ( April and Augu: when Juneau receive thirty inches of rain However, a two-wee period of unusuall warm, sunny weathe desiccated the hig marsh area. Waterin was necessary, but di ficult to accomplis on such a large situ Crews used bucket and a garden qualit

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 concenDuring 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 forbs 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

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.

Land and Water

gasoline-powered water pump to irrigat the wetland. Some plant mortalit occurred, and it is likely that a prolonge period of hot, dry weather would hav significantly impacted plant survival. I prevent this from happening on futur projects, fill and topsoil with a highe organic content than what was used i this project would help retain moistur Other strategies include controlling wate levels to keep soil saturated while plan ing, or the delaying of planting until Jul when precipitation is more reliable an frequent in Juneau.

There is some concern that the wate level is higher than the designed leve However, the rainfall was higher tha average in 2006, so it is difficult to tell the water levels in the wetland will drop For this reason, designing a dam wit adjustability to account for the discrepanc in water level would improve the functio and success of the project.

#### **Recreational Use of the Site:**

The design and development of community trail through the wetlan

#### Guidelines for Gravel-Pit Wetland Creation

by

#### Bonnie Baldwin Prange

The frequent colonization of the margins of abandoned and Abstract. 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.

#### 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 longterm 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 longestablished 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

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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 watertable 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 reevaluated, 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 selfmaintaining 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 gentie 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 The site grading plan is an been realized. 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-orgravel-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 SH: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 reestablish 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 selfregulating 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 onsite 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., widetrack 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 loosing 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 Miller (1987) suggests that a seed species. 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 filledin 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 stormwater 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 0.9to-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-gravelmine 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.

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#### 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.

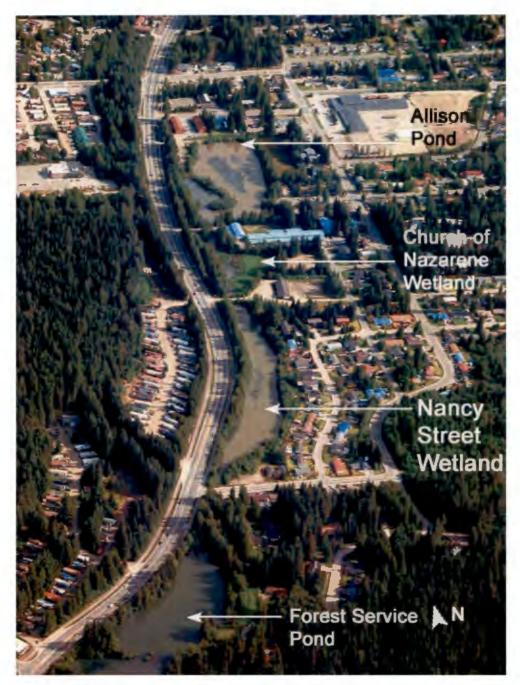


Photo from Koski and Lorenz, 1999.

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.

5

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.

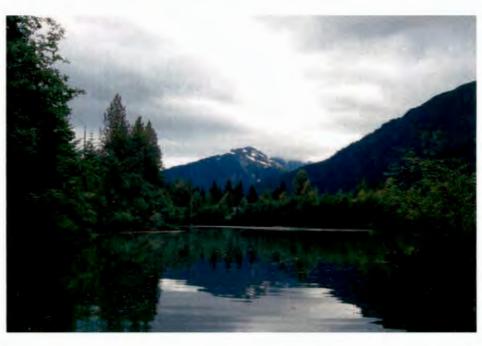
Wetland vegetation promotes the conversion of Fe(II) to Fe(III) and retains the iron floc in the roots of the plants. The roots of wetland plants leak oxygen into the soil. This zone surrounding the roots that contains oxygen is called the rhizosphere. Within the rhizosphere, Fe(II) is converted to Fe(III) 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. 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.

The impetus for this partnership formed around the need for a waste disposal site for material extracted from the Mendenhall Valley high school contruction 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.

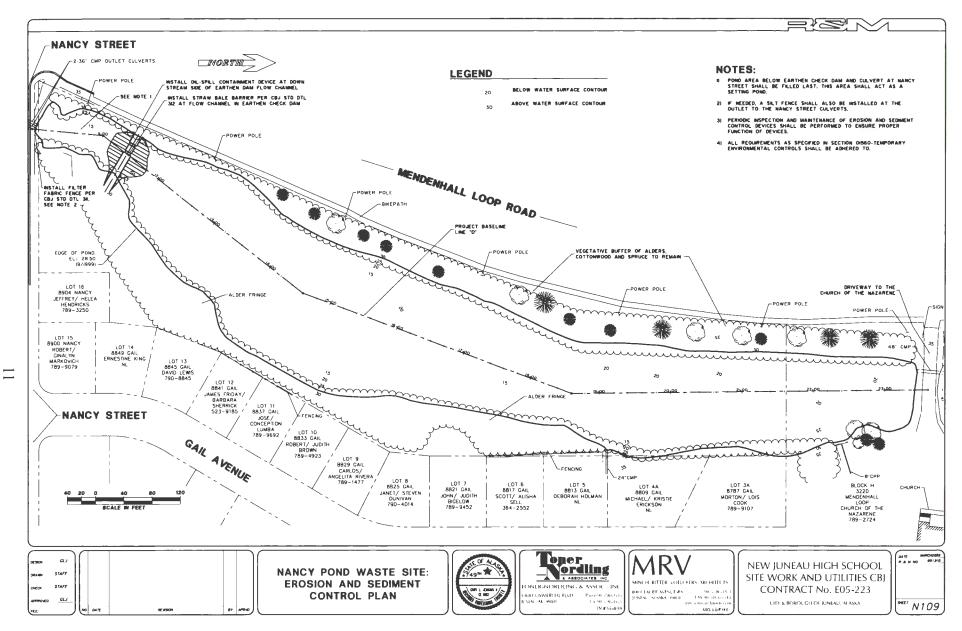


Figure 1. Existing Conditions for the Nancy Street Wetland

R&M Engineering and Toner Nordling Associates produced the existing plan for the Nancy Street Wetland Enhancement Project. The water surface elevation is approximately 28'. The plan shows a few holes that are 16' below the water's surface. Steep banks surround the pond and prevent wetland vegetation from growing.

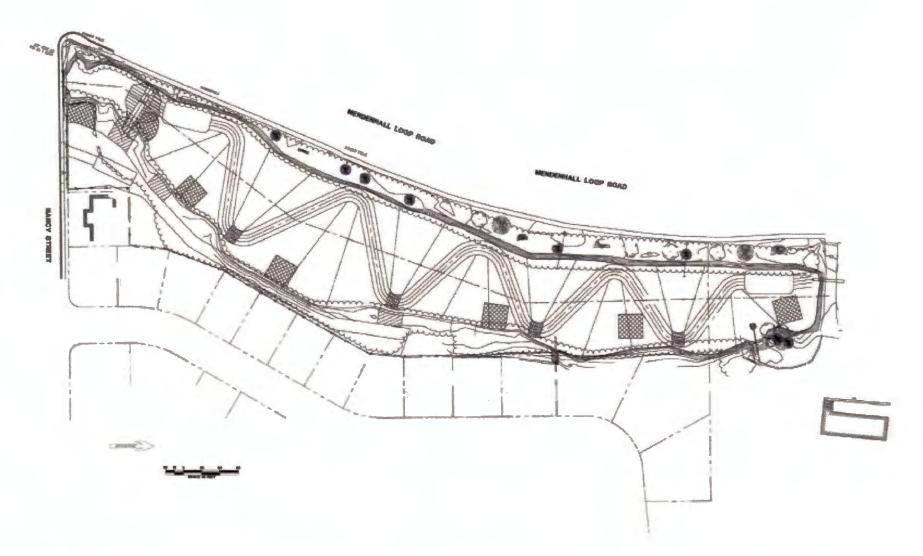
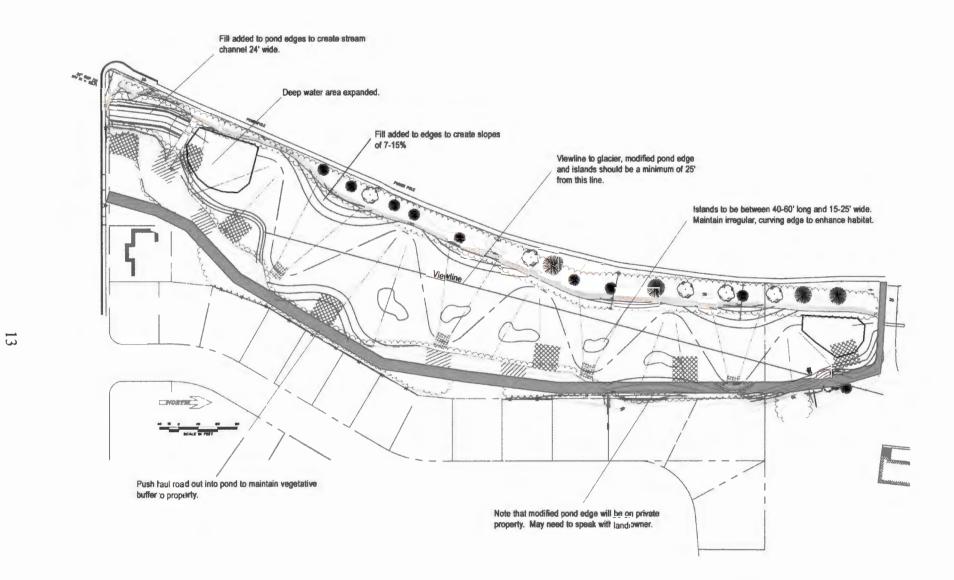


Figure 2. Initial Design for the Nancy Street Wetland Enhancement Project

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

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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.

-	
The state of the s	0 6' 10' 16' 20'
we we Existing Topography Water	
Proposed Fill	

# Figure 4. Cross Section of the Coho Salmon Overwintering Pond

14

Undisturbed earth

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.

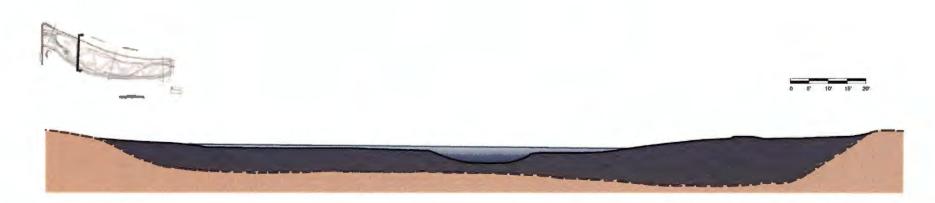
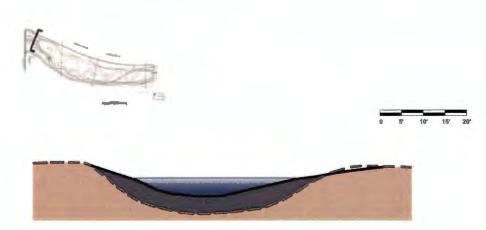


Figure 6. Cross Section of the High marsh, Low Marsh, and Stream Channel

# 15



**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 rainful 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, relayed 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.



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

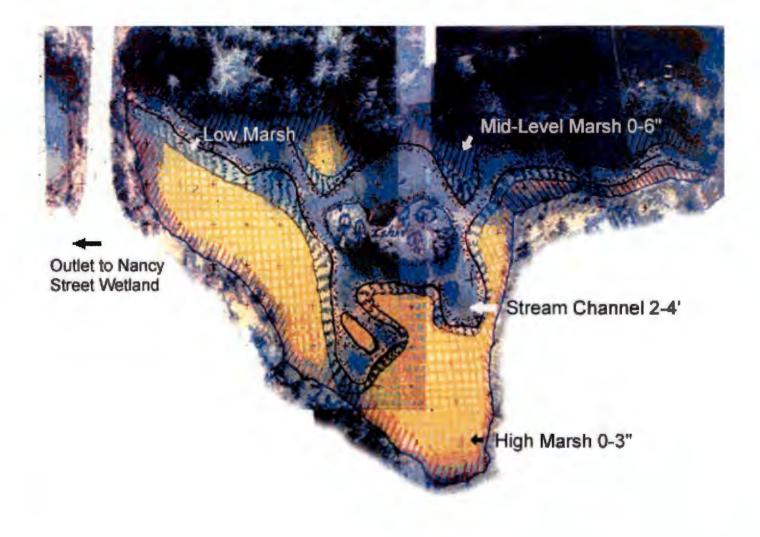
Nuphar luteum, Yellow Pond Lily Potamogeton gramineus, Grass-Leaved Pondweed Sparganium emersum, Narrow-Leaved Burrweed

## 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, Bluejoin 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 Nazar	ene Plant Evaluation
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site	water depth (cm)	% cover	live stems	description of quadrant	plant species
la	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 wa- ter, 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 wa- ter, 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 in 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.

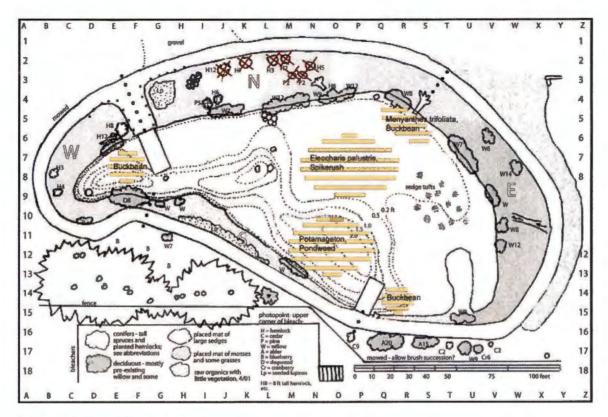
From the perspective that Nancy Street Wetland is part of ongoing experimentation and research into constructed wetlands in Southeast Alaska, expanding the diversity of the plant community may be beneficial to learn which types of plants colonize rapidly and if there are species that retain iron more 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), Equistetum (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 Potomageton 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. Potamageton 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).

 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



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.

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 Potamageton 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.

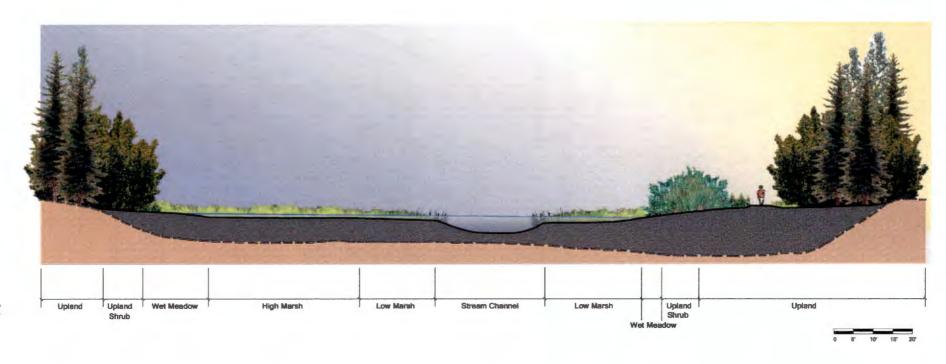


Figure 11. Typical Planting Zone Elevation

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' 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.

# Actual Planted Species

Low and High Marsh		Low and High Marsh	
<u>Species</u>	Common Name	Species	Common Name
Caltha palustris	Marsh Marigold	Caltha palustris	Marsh Marigold
Carex sitchensis	Sitka Sedge	Carex sitchensis	Sitka Sedge
Eleocharis palustris	Spike Rush	Eleocharis palustris	Spike Rush
Scirpus microcarpus	Small Leaved Bulrush	Scirpus microcarpus	Small Leaved Bulrush
Juncus mertensianus	Merten's Rush	Carex lyngbae	Lyngby's Sedge
Lysichiton americanum	Skunk Cabbage		
Menyanthes trifoliata	Buckbean		
Carex mertensii	Merten's Sedge		
Calamagrostis canadensis	Blujoint Reedgrass		
Deschampsia cespitosa	Tufted Hairgrass		
Wet Meadow		Wet Meadow	
Aquilegia formosa	Western Columbine	Aquilegia formosa	Western Columbine
Calamagrostis canadensis	Bluejoint Reedgrass	Calamagrostis canadensis	Bluejoint Reedgrass
Deschampsia cespitosa	Tufted Hairgrass	Deschampsia cespitosa	Tufted Hairgrass
Frittilaria camschatcensis	Chocolate Lily	Fritillaria camschatensis	Chocolate Lily
Iris setosa	Iris	Iris setosa	Iris
Aconitum delphinifolium	Monkshood	Lupinus nootkatensis	Lupine
Dodecathon pulchellum	Shooting Star	Hierchloe odoratum	Sweet Grass
Eriophorum angustifolium	Cottongrass		
Viola palustris	Marsh Violet		
Upland Shrub		Upland Shrub	
Alnus viridus	Sitka Alder	Alnus viridus	Sitka Alder
Aruncus dioicus	Goat's Beard	Aruncus dioicus	Goat's Beard
Cornus stolonifera	Red Twig Dogwood	Cornus stolonifera	Red Twig Dogwood
Rubus spectabilis	Salmonberry	Rubus spectabilis	Salmonberry
Salix barclayi	Barclay's Willow	Salix barclayi	Barclay's Willow
Salix sitchensis	Sitka Willow	Festuca rubra	Red Fescue
Viburnum edule	High Bush Cranberry	Rubus parviflorus	Thimbleberry
		Alnus rubra	Red Alder
Upland		Upland	
Alnus rubra	Red Alder	Alnus rubra	Red Alder
Alnus viridus	Sitka Alder	Alnus viridus	Sitka Alder
Cornus stolonifera	Red Twig Dogwood	Cornus stolonifera	Red Twig Dogwood
Picea sitchensis	Sitka Spruce	Picea sitchensis	Sitka Spruce
Populus balsamifera	Black Cottonwood	Populus balsamifera	Black Cottonwood
Rubus spectabilis	Salmonberry	Rubus spectabilis	Salmonberry
Salix barclayi	Barclay's Willow	Salix barclayi	Barclay's Willow
Salix sitchensis	Sitka Sedge	Rubus parviflorus	Thimbleberry
Viburnum edule	High Bush Cranberry	Festuca rubra	Red Fescue

Table 4: Record of Planting Quantity, Source and Labor

Date	Species	Туре	Quantity	Source	Labor
18-Apr	Festuca rubra	seed	10 lbs	Alaska Mill and Feed	USFWS
7-Jun	Salix barclayi	cutting	1500	Wren Drive/Back Loop Road	volunteer
7-Jun	Populus balsamifera	cutting	150	Behind Community Gardens	volunteer
13-Jun	Carex lyngbae	plug	130	Coast Guard Wetland	SAGA
14-Jun	Carex sitchensis	plug	450	Duck Creek by Superbear	SAGA
14-Jun	Caltha palustris	plug	40	Duck Creek by Superbear	SAGA
15-Jun	Carex	plug	300	Coast Guard Wetland	SAGA
15-Jun	Carex sitchensis	plug	375	Church of Nazarene Wetland	SAGA
15-Jun	Carex sitchensis	plug	200	Church of Nazarene Wetland	SAGA
19-Jun	Calamagrostis/ Deschampsia	plug	164	Lemon Creek Wetland	SAGA
19-Jun	Fritillaria camschatensis	plug	34	Lemon Creek Wetland	SAGA
19-Jun	Hierchloe odoratum	plug	31	Lemon Creek Wetland	SAGA
19-Jun	Iris nootkatensis	plug	31	Lemon Creek Wetland	SAGA
20-Jun	Calamagrostis/Deschampsia	plug	276	Lemon Creek Wetland	SAGA
20-Jun	Fritillaria camschatensis	plug	83	Lemon Creek Wetland	SAGA
20-Jun	Hierchloe odoratum	plug	49	Lemon Creek Wetland	SAGA
20-Jun	Iris nootkatensis	plug	60	Lemon Creek Wetland	SAGA
21-Jun	Rubus spectabilis	transplant	200	Duck Creek by Superbear	SAGA
22-Jun	Carex sitchensis	plug	20	Duck Creek by Superbear	SAGA
22-Jun	Picea sitchensis	transplant	8	DOT ROW Loop Rd	SAGA
23-Jun	Lupinus nootkatensis	seed	unweighed	US Forest Service, Ketchikan	NRCS
26-Jun	Eleocharis palustris	plug	100	Coast Guard Wetland	SAGA
26-Jun	Scirpus microcarpus	plug	100	Lemon Creek Wetland	SAGA
27-Jun	Thimbleberry	transplant	55	DOT land on channel by GCI	SAGA
27-Jun	Rubus spectabilis	transplant	35	Duck Creek by Superbear	SAGA
29-Jun	Carex	plug	175	DOT ROW north of SE Vet	SAGA
29-Jun	Festuca rubra	seed	20 lbs	Alaska Mill and Feed	SAGA
29-Jun	Calamagrostis canadensis	seed	10 lbs	Alaska Mill and Feed	SAGA
29-Jun	Deschampsia cespitosa	seed	10 lbs	Alaska Mill and Feed	SAGA
30-Jun	Cornus sericea	plug	216	Nat's Nursery, BC	CBJ
30-Jun	Festuca rubra	seed	10 lbs	Alaska Mill and Feed	CBJ
30-Jun	Calamagrostis canadensis	seed	10 lbs	Alaska Mill and Feed	CBJ
30-Jun	Deschampsia cespitosa	seed	8 lbs	Alaska Mill and Feed	CBJ
5-Jul	Carex	plug	490	DOT ROW north of SE Vet	SAGA
6-Jul	Carex	plug	245	DOT ROW north of SE Vet	SAGA
20-Jul	Picea sitchensis	transplant	?	DOT ROW Loop Rd	CBJ
20-Jul	Festuca rubra	seed	20 lbs	Alaska Mill and Feed	CBJ
20-Jul	Calamagrostis canadensis	seed	5 lbs	Alaska Mill and Feed	CBJ

cont. Table 4: Record of Planting Quantity, Source and Labor

Date	Species	Туре	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.

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.





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.

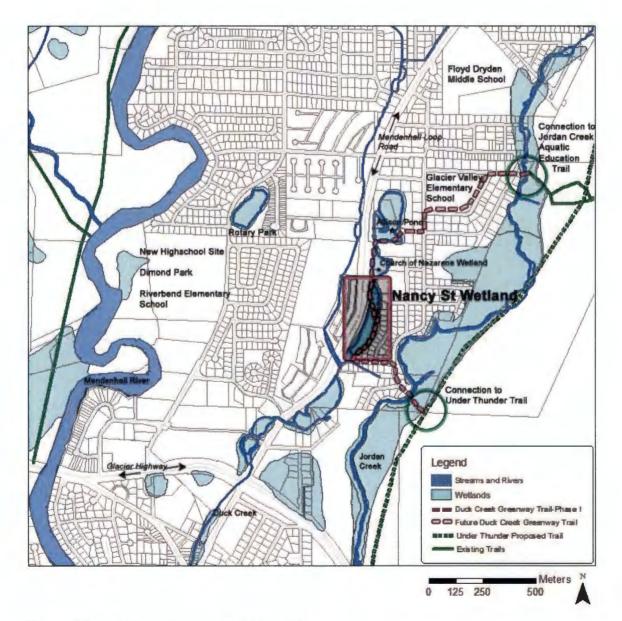


Figure 15. Duck Creek Greenway Trail Master Plan.

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.



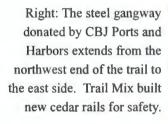
Trail Mix hauls gravel to build the trail across the island in August.



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.





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.

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.

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 fo	r Freshwa	ater Wetlands		1							· · · · · · · · · · · · · · · · · · ·
Scientific Name	Common Name	Recommendation by	Water Level	Height	Transplant Potential	Seed Potential	Wildlife Benefits	Human Benefits	Iron phytoremediation	Liabilities	Other Issues
Deep Water							1				
Caltha natans	Floating Marsh Marigold	Book	aquatic floating	1-3'				attractive flower			floats or creeps in mud, stolons root at nodes
Nuphar polysepalum	Yellow pond-lity	Patti Krosse, Ed Buyarski	3-4' average water depth, up to 6' stalk	and	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 assy to remove
Potamogeton natans	Floating	Observed at Nancy Street	aquatic floating from bottom 3-9'		yes		very valuable food source for mailards 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, teep deep water areas in poots if open water habitat is desired
Sparganium angustifolium	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
Marsh Caitha palustris	Yellow Marsh Marigoid	Book	wet areas with slow running water	variable	divide rootball	seed direct sow in fail		attractive flower	)		limited survival at CoN
Carex mertensii	Merten's Sedge	Patti Krosae	upland, more dry conditions, in transition zone	4'	one of the easiest types of carex to transplant	Ves		attractive colorful,large spikes	dense root system may	Carex more difficult to dig roots	germinates easily, some found in CoN, planted in Kingfisher Pond, growing very welf in low saturates soil, but also growing on wet slopes.
Carex sitchensis	Sitka Sedge	Observed at CoN Wetland	emergent	1-5'	yas	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
Carex stipata	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 d well
Eleocharis Dalustris	Spike Rush	Observed at Floyd Dryden Wetland	in shallow standing water, 1-2*	8-24"		1		attractive head			spread very well in Floyd Dryden Pond and has an attractive head and reddish hue to the stems
Equisetum	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 soli	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
Hordeum	Meadow Bartey	Observed at Kingfisher Pond	moist soils	3'		yes	food for blacktail deer	-		Primarily a maritime apecies, 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
	Common		some water-a little drier, gravelly					less attractive,			
Juncus effusus	Rush	Patti Krosse	disturbed land	1-4'	Difficult	yes		smaller	and a state of the		germinates easily
Juncus mertenslanus	Merten's Rush	Observed at Kingfisher Pond	marsh and bog	1		yes		attractive seed head			planted in Kingfisher Pond (seed) growing in saturated soli
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		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-	1'	easy to dig up but difficult to establish in soil	Ves	fruit is food for files, beetles, bees, and birds	attractive flower		rhizomes	planted in peat with water around it at all times, creeping rhizomes should be separated in fail or early spring. Transplanted into Floyd Dryden wetland, has sprea and is doing well there
Scirpus Microcarpus	Small-Leaf Buirush	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 buirush present in CoN, believed to be this type, planted in Kingfisher Pond. It is doing very well and has spread
Wet Meadow											
Aconitum	Monkshood	Book	wet meadow, streambanks	3'		2 2 2		attractive flowers		poisonous	needs the drier upslope of wet meadow, often found at higher elevations
Aquilegia formosa	Columbine	Ed Buyanski	wet meadow, streambanks, often in rocky areas	2'	ves	ves	food for hummingbirds, cover for nesting species	attractive flower			prefers drier areas, well-drained, Ed Buyarsid says seeding works very well
Calamagrostis canadensis	Bluejoint Reedgrass	Book, Dave Maddix	wet meadows and well- drained uplands	3'	yes with sprigs	fimited, grassrolis or sprigging plugs	bird seed, nesting, cover for small mammais		dense fibrous root system, slightly rhizomatous		forms overhanging banks, aggressive colonizer in disturbed areas
Deschampsia cespitosa sep. beringenais	Tufted Hairgreas	Book	moist soils	1-4'		yes, but high demand	low to moderate fishery and habital 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
Dodecathon	Shooting Sta	Patti Krosse, Ed	molat soil but not standing water	1-1.5'	very easy	difficult, needs to be wet and cold through winter		attractive flower			chailenging to start from seed

Scientific Name	Common Name	Recommendation by	Water Level	Height	Transplant Potential	Seed Potential	Wildlife Benefits	Human Benefits	Iron phytoremediation	Liabliities	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	8 <sup>*-40*</sup>		yes	low habitat and fishery value	reddish hue			very common in Alaska in low elevation meadows and mountai meadows, easy to seed, used fo agriculture, horticulture, lawns, tolerates flooding
Fritiliaria camschatcensis	Chocolate Lily	Patti Krosse	moist soll 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 soli	1-3'	easy	yes-gather in		attractive flowers	8		Rhizomes can be divided and gathered in spring or in fail in mild areas
Lupinus nootkatensis	Nootka Lupine	Ed Buyarski	moist solls	2-3'	very difficult to transplant because of extensive root system	pop and capture the	food for hummingbirds, cover for nesting species	attractive flowers	8	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	3-8'	dig up rhizomes with many root off shoots, fairly easy	1	berries good for food	attractive flowers and berries, good screening	8	attracts bear	
Valeriana sitchensis	Sitka Valerian	Book	moist soil	1-3'				attractive flowers			
Viola palustris	Marsh Violet	Ed Buyanski	saturated soils	low	yes, easy			attractive flowers	-		
Acer glabrum	Douglas Maple		floodplain, moist, into uplands	30'	Seed, transplant, softwood cutting	yes	birds eat seeds, cover	attractive fail foliage, yellow- crimson		found mostly in Juneau on rocky coast	
Ainus 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 Akter	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

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Scientific Name	Common Name	Recommendation by	Water Level	Height	Transplant Potential	Seed Potential	Wildlife Benefits	Human Benefits	Iron phytoremediation	Liabilities	Other issues
Comus stolonifera	Red Osier Dogwood	Book	rmoist 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 bes survived and is sending up new shoots.
	0.11.0		wet soils to dry	0001			birds eat seed, habitat, winter	evergreen, good			
Picea sitchensis	Sitka Spruce	BOOK	uplands	200'	transplant, seed	yes	nesting	screen			
Populus balsamifera	Black Cottonwood	Book	water edge	150'	dormant cuttings, live stakes, bundles, brush layer, hege layering, rooted cuttings, transplants, seed	yes	birds eat seed, habitat				
Salix barciavii	Barclay's Willow	Ellen Anderson	water edge	6-8'		ves	habitat				often has 'willow roses' at end of twigs from deformed leaves and insects
Salix sitchensis	Sitka Willow			3-24'	dormant cutting, live stakes, bundles, frush layer, live silitation, hedge layering, rooted cuttings, transplants, iseed		habitat				
Spirea dougiasii	Hardtack	Observed at Kingfisher	wet solls	0-24	2001	103	, HERVILLS			Juneau is north of its zone	Seeded in Kingfisher Pond, no plants found.
Tsuga neterophylia	Western Hemlock		wet soils	180'	transplant, seed	yes	habitat	evergreen, good screen			needs significant organic content on site to grow, does not do wall in recently deglaciated areas, shade tolerant
∕ibumum edule	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 Buyanski says its easy to take cuttings, similar to willow
Sources:											
		June-August, 2005. Unite	1	Service, Ju	uneau, Alaska.				<u>}</u>		
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Krosse, Patti. Con	versations Jun	e-August, 2005. United S	tates Department	of Nature	al Resource Conservation	n. Ketchikan	1				
ipkin, Robert and	Tande, Gerald	. "Wetland Sedges of Ala	iska", Prepared	for the US	S EPA. Alaska Natural F	leritage Prog	ram Environment and	i Natural Resourc	es Institute. Kenai, 2003.	<u></u>	
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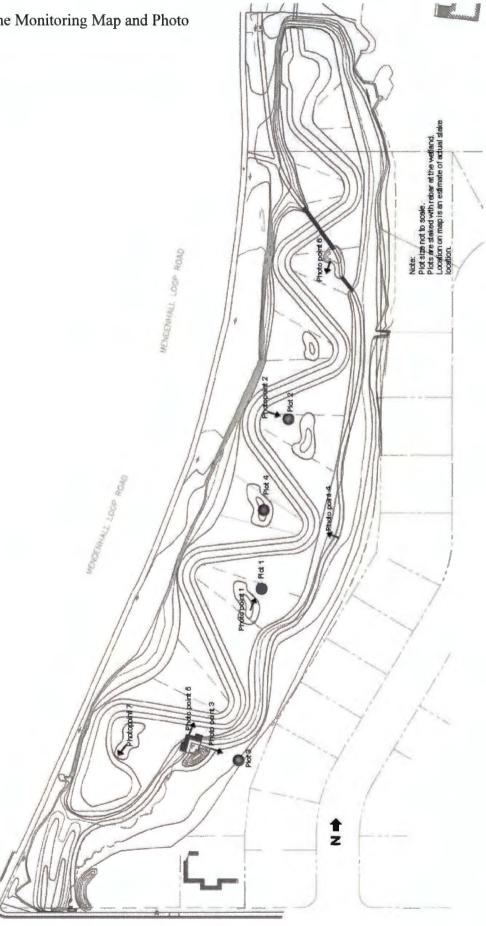
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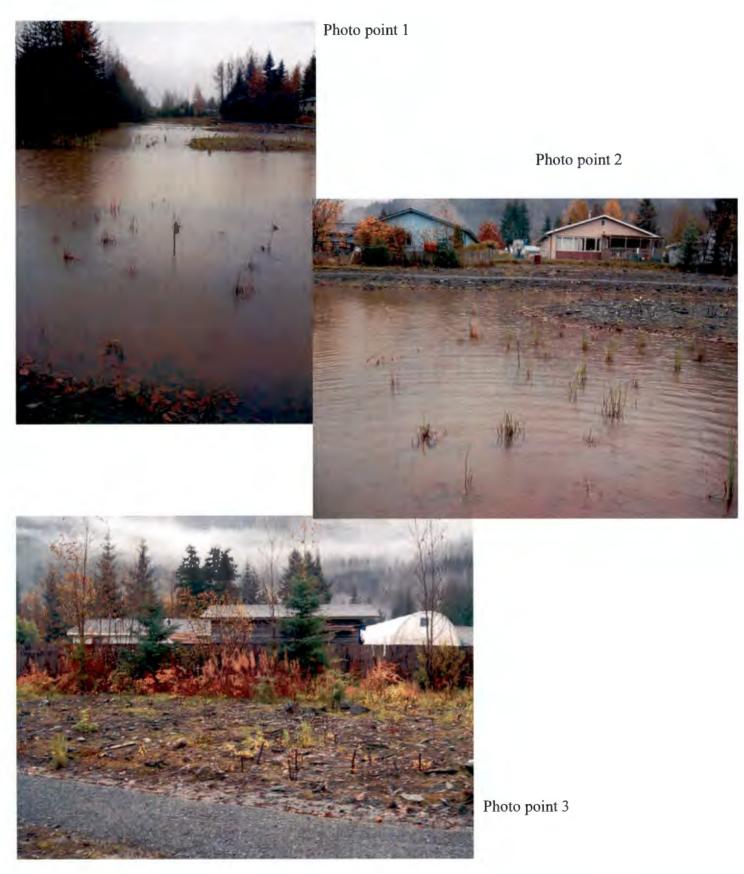
# Appendix 2a. Baseline Monitoring Data October 2006

Sample Plot	Dominant Species	Common Name	Coverage (%)	Density (number count of species)	Standing water (in)
				1 ,	
Plot 1	Carex sitchensis	Sitka sedge		17	11.5
	Caltha palustris	Marsh marigold		1	11.5
Plot 2	Carex sitchensis	Sitka sedge		12	10
	Scirpus microcarpus	Small-Leaf Bulrush		2	10
	Equisetum	Horsetail		2	10
Plot 3	Salix barclayi	Barclay's Willow		11	0
	Alnus	Alder		3	0
	Rubus spectabilis	Salmonberry		2	0
	Athyrium filix-femina	Lady Fern		2	0
	Festuca rubra	Red Fescue			
Plot 4	Salix barclayi	Barclay's Willow		11	0
	Rubus spectabilis	Salmonberry		1	0
	Cornus stolonifera	Red-Twig Dogwood		1	0
	Deschampsia cespitosa	Tufted Hairgrass			0
	Calamagrostis canadensis	Blue-Joint Reed Grass			0
	Festuca rubra	Red fescue			0

Appendix 2b. Baseline Monitoring Map and Photo Point Locations



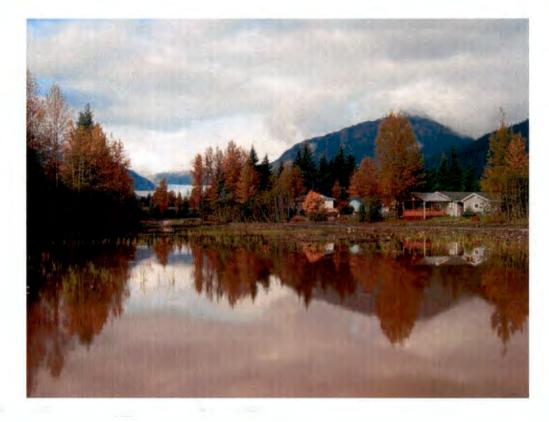
Appendix 2c. Photo points October 2006



# Photo point 4



Photo point 5



# Photo point 6





Photo point 7

	Price	per Unit	Quantity	Unit	Cost
Filling Lemon Creek 52,000 cy					
tipping fee	\$2.50	cy	52,000	су	\$130,000
trucking fee	\$68	load (8 cy)	6,500	loads	\$442,000
				Total Cost for Lemon Creek Filling	\$572,000
<b>Option 2: Nancy Stree</b>	et Wetlan	d Filling			
	Price	per Unit	Quantity	Unit	Cost
Filling Nancy Street 52,000 cy					
tipping fee	\$1	cy	52,000	су	\$52,000
trucking fee	\$20	load (8 cy)	6,500	loads	\$130,000
				Total Cost for Nancy Street Filling	\$182,000
				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
				Savings for CBJ after land purchase	\$253,000

# Appendix 3A. Budget - CBJ Cost Benefit for New High School Project

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
1.	Land Purchase			
	CBJ	Street Sales Tax	Land Purchase	\$137,000
			Total	\$137,000
2.	Earthwork			
	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
			Total	\$115,000
3.	Planting, Final Grading, Ou	utlet Channel and Control S	tructure	
	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
			Total	\$177,150
4.	Trail Construction			
	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
			Total	\$75,646
-			GRAND TOTAL	\$504,796

# Timeline for Purchase, Filling and Enhancement

64

				2005	5											2006	5			
	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Äpr	May	Jun	Jul	Aug	Sep	Oct
Land Purchase	123				_															
Planning and Design for Filling	17 August																			
Planning and Design for Revegetation																				
Earthwork and Filling							- CONTR	1 in							-					
Outlet Channel and Control Structure																				
Planting				_										- 15						
Trail Construction																				

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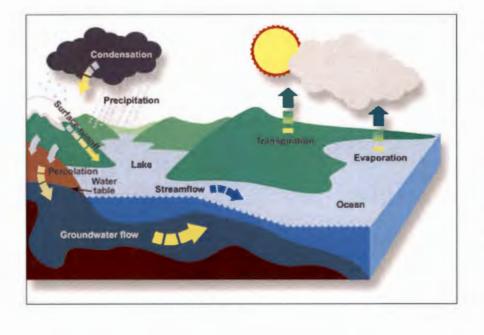
"Wetland Restoration, Creation, and Enhancement". Developed by the Interagency Workgroup on Wetland Restoration. National Oceanic and Atmospheric Administration, Environmental Protection Agency, Army Corp of Engineers, U.S. Fish & Wildlife Service, and Natural Resource Conservation Service.



Essential materials for building a strong Ontario

# **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.



**About Aggregates #8** 



# **OSSGA**

#### 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).

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,

**About Aggregates #8** 

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 belowwater 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.

# 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 ahemicals. 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 (SENES, 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.

#### Prepared by Gartner Lee Limited in consultation with OSSGA's Environment Committee.

#### References

Gartner Lee Limited, 2001. 2001 Groundwater and Surface Water Monitoring, Kirkfield Quarry, Carden Township.

Harden Environmental Services Limited, 1995. *Hydrology Report – Caledon Sand and Gravel Inc.* January 18, 1995.

Hunter and Associates with Raven Beck Environmental Ltd., 1996. Technical Report – Hydrogeologic Evaluation of the Oak Ridges Moraine Area. Prepared for the Oak Ridges Moraine Technical Working Committee. January 31, 1996.

Ministry of Natural Resources, 1997. Aggregate Resources of Ontario – Provincial Standards, Version 1.0.

Ostrander, M.D., Martin, P.J., Blackport, B. and Picotti, M., 1998. Impact of Aggregate Extraction Activities on Cold Water Discharge. Groundwater in a Watershed Context. Canadian Water Resources Association.

SENES Consultants Limited, 1989. Aggregate Industry MISA Preregulation Monitoring Program Results. May, 1989.

The "About Aggregates" series:

- 1. Aggregates and the Law
- 2. Bronze Plaque Award
- 3. Rehabilitation of Pits and Quarries
- 4. Being a Good Neighbour
- 5. Importance of Aggregates
- 6. Geology and Aggregate Extraction
- 7. Controlled Blasting at Quarries
- 8. Groundwater in the Aggregate Industry
- 9. Management of Abandoned Aggregate
- Properties (MAAP) Program



ONTARIO STONE, SAND & GRAVEL ASSOCIATION

365 Brunel Road, Unit 2 Mississauga, ON L4Z 1Z5 T: (905) 507-0711 F: (905) 507-0717 www.ossga.com www.theholestory.ca

About Aggregates #8

Mr. Ed Martin III, President Kenai Peninsula Aggregate and Contractors Association Via email: Kpac (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 my 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 jong tern 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

Carey Maller 1

Casey Madden, P.E. Alaska Registered Civil Engineer No. 7235



### Broyles, Randi

From:	Blankenship, Johni
Sent:	Monday, January 24, 2022 10:52 AM
То:	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

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?

and are valid for one year. The site development plan may be renewed on an annual basis subject to the planning director's approval.

# Ned to Spreas 21.29.020. Material extraction and activities requiring a permit.

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.

Β. 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.

- Α. 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;

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- 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 DEC Regis ON Incertifices Theisicology 9. Indisicology 9. May Not ivel May Not ivel Chuil Etgy the operators are certified), including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and port know what this means traps, and silt fence; 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) Location of excavation, and, if the site is to be developed in

phases, the life span and expected reclamation date for each phase:

- Proposed buffers consistent with KPB 21.29.050(A)(2), or b. alternate buffer plan;
- Identification of all encumbrances, including, but not limited c. 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;
- Anticipated haul routes; e.

8

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)

Lucation of wells of adjacent proper feet of the proposed parcel boundary; on public Sources Location of wells of adjacent property owners within 300

May Not the enough for Public wells Privote get Kenai - Trans

New Text Underlined; [DELETED TEXT BRACKETED]

- 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]j. North arrow;
- [L]k. The scale to which the site plan is drawn;

[M]]. 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.
- B. In order to aid the planning commission or planning director's decisionmaking 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;



Protects against Minimizes physical damage to [OTHER] adjacent 2.

properties;

- [MINIMIZES] Protects against off-site movement of dust; 3.
- [MINIMIZES] Protects against noise disturbance to other properties; 4.
- [MINIMIZES] Protects against visual impacts of the material site: [AND] 5. (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.)
- Provides for alternate post-mining land uses[.]; 6.
- Protects Minimizes Receiving Waters against adverse effects to fish 7. and wildlife habitat;
- Minimizes Protects against traffic impacts; and 8.
- 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.

- The following mandatory conditions apply to counter permits and CLUPs Α. 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 Operators typically in operators typically in construction prop. boomer[. professional land surveyor or site operator. Stakes shall be in place [AT TIME OF APPLICATION] prior to issuance of the permit. (Many site soperators have GPS capability accurate to +/- 1".)

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:
  - 1. 50 FEET OF UNDISTURBED NATURAL VEGETATION. OR
  - 11. 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 IN 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.
  - 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.]
- Comply will 18AAC TO-SOA Waln Guality Regulations Regulations

D.

Stope 2:1

- 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.

- There is no requirement to buffer a material site from uses that <u>f.</u> commence after approval of the permit.
- When a buffer area has been denuded prior to review of the g. 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)
- Water source separation. 4.
  - All permits shall be issued with a condition which prohibits a. 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.

4. Operations shall not breach an aquifer-confining layer. A four-foot vertical separation [FROM]between operations and the senace of the sena 2. The bottom of excavation must be 15 feet above the nearest.

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.)

Allows poperetor to excav. is into GWT but requires a d'vort sepanadian to Gut? New Text Underlined; [DELETED TEXT BRACKETED] Kenai Peninsula Borough, Alaska

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HINS ZOD VICE

- c. All CLUPS shall be issued with a condition which requires that a [TWO] <u>four</u>-foot vertical separation [FROM]<u>between</u> <u>extraction operations and</u> 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.
- *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.
    - 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.

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.

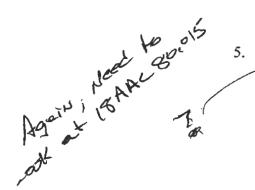
Operations shall not breach an aquifer-confining layer.

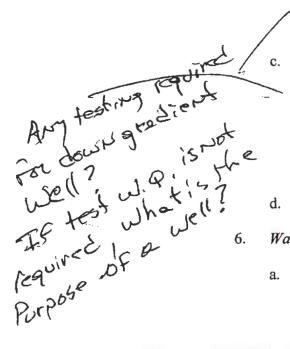
#### Waterbodies.

b.

a. An undisturbed buffer shall be left and no earth material extraction activities shall take place within [100] <u>200</u> linear feet from <u>excavation limits and the ordinary high water level</u>

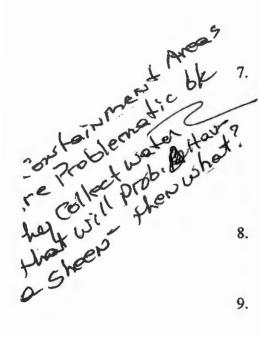
Kenai Peninsula Borough, Alaska <u>New Text Underlined;</u> [DELETED TEXT BRACKETED] Ordinance 2021-TFFOUNEd & large Grovel extraction operation, I Page 15 of 28 would want an accurate Sw Flow study with background wig. tool nocult to Protect mo From Folse Contamination Claims.





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.
- 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)
- 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. <u>Processing equipment shall not be operated between 10:00</u> 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 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)

Ordinance 2021-Page 19 of 28

- 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.
- Non chore the t? Non chore the t? 15 chore the t? doust of Moni testing: 22. its formation.)
  - 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

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.)
- Β. 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



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.

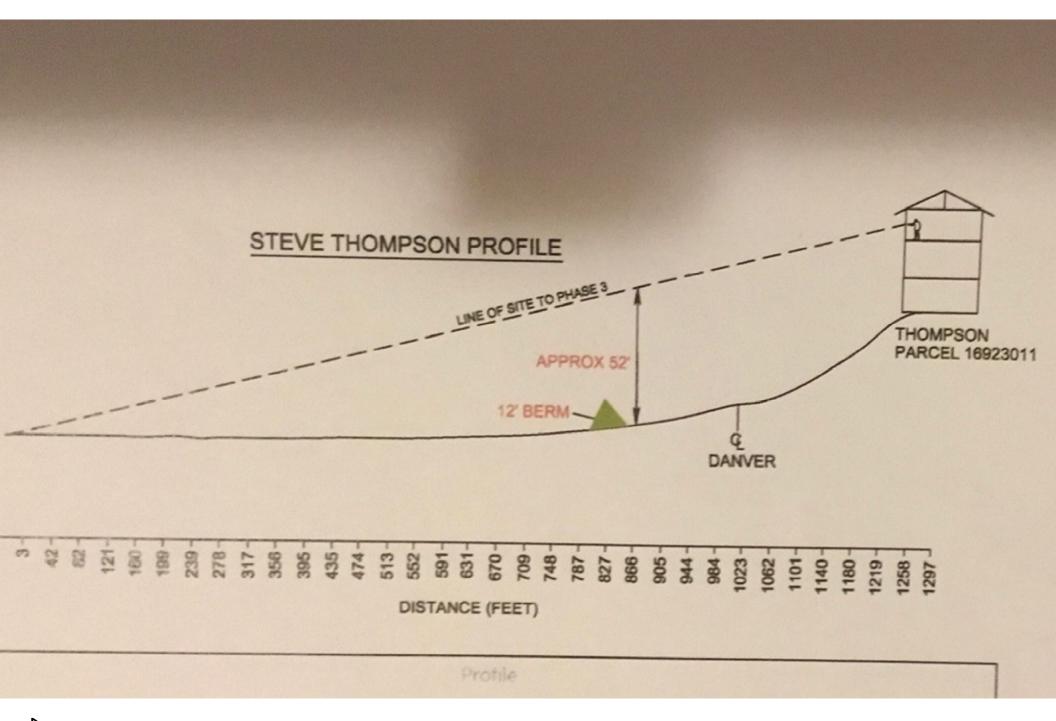
(22) unnecessary. Mining in the water table is common throughout Alaska.

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

From:	Blankenship, Johni
Sent:	Tuesday, January 18, 2022 4:23 PM
То:	Turner, Michele
Subject:	FW: <external-sender>Please provide to the Assembly for tonight's meeting on Ord. 2021-14</external-sender>

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 1Material 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 brought 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 asbuilt 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 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,

JU DeBardelaber

Gina DeBardelaben, P.E. Vice President McLane Consulting, Inc.

Introduced by: Substitute Introduced:	Martin 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
Action:	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, onsite 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;
- 1. 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 decisionmaking 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.

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- 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.
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  - 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.
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  - 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.
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  - b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.
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- 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 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.

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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 additional 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.

- Α. Material sites are not held to the standards and conditions of a CLUP if a prior existing use (PEU) determination was granted for the parcel in accordance with KPB 21.29.120(B). To qualify as a PEU, a parcel's use as a material site must have commenced or have been operated after May 21, 1986, and prior to May 21, 1996, provided that the subject use continues in the same location. In no event shall a prior existing use be expanded beyond the smaller of the lot, block, or tract lines as they existed on May 21, 1996. If a parcel is further subdivided after May 21, 1996, the pre-existing use may not be expanded to any lot, tract, or parcel where extraction had not occurred before or on February 16, 1999. If a parcel is subdivided where extraction has already occurred, the prior existing use is considered abandoned, and a CLUP must be obtained for each parcel intended for further material site operations. The parcel owner may overcome this presumption of abandonment by showing that the subdivision is not inconsistent with material site operation. If a parcel subject to a prior existing use is conveyed, the prior existing use survives the conveyance.
- B. Owners of sites must have applied to be registered as a prior existing use prior to January 1, 2001.
- 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.

Code Chapter	Chapter / Section Title	Scheduled Fine
Section Citation		
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	\$100.00
	use permit	
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>	Violation of conditions	<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] <u>provision of services, sale of goods, or use</u> 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].

<u>Conditioning or processing material means a value-added process including batch</u> 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:

WINNING ENIN Sherry Biggs, Borough C <sup>7</sup>984 

Yes: Chay, Fischer, Germano, Gilman, Martin, Sprague, Superman, Long

No: None

Absent: None

Abstained: Merkes

Introduced by:MayorSubstitute Introduced:01/16/18Resolution 2018-004<br/>(Mayor)See Original for Prior HistoryAction:AdoptedVote: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:

Johni Blankenship, MMC, Borough Clei

Wayne H. Ogle, Assembly President

NSULA KEALS NILLING 

Yes:Bagley, Blakeley, Carpenter, Dunne, Fischer, Hibbert, Smalley, OgleNo:NoneAbsent:Cooper

Introduced by:
Date:
Action:
Vote:

Ogle 05/15/18 Adopted as Amended 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.

Bagley, Blakeley, Carpenter, Cooper, Dunne, Fischer, Hibbert, Smalley, Ogle

ATTEST:

Johni Blankenship, MMC, Borough Clerk

gle, Assembly President Wayne H PENINSULA SOBOUGH PENINSUL

Yes: No:

None

Absent: None

### Kenai Peninsula Borough Assembly

### 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)

[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.

- •••
- Location of any water body on the parcel, including the location of any riparian wetland as determined by <u>best</u> <u>available data</u> ["WETLAND MAPPING AND CLASSIFICATION OF THE KENAI LOWLAND, ALASKA" MAPS CREATED BY THE KENAI WATERSHED FORUM];

Your consideration of this amendment is appreciated.

Introduced by:	Johnson
Date:	04/05/22
Hearing:	05/03/22
Action:	
Vote:	

#### KENAI PENINSULA BOROUGH ORDINANCE 2022-08

### AN ORDINANCE AMENDING KPB 5.12.116 TO BROADEN ECONOMIC DEVELOPMENT PROPERTY TAX EXEMPTION FOR INDEPENDENT POWER PRODUCERS

- WHEREAS, AS 29.45.050(m) provides municipalities discretionary authority to partially or totally exempt all or some types of economic development property from taxation for a designated period; and
- WHEREAS, pursuant to AS 29.45.050(m) a municipality that is a school district may only exempt all or a portion of the amount of taxes that exceeds the amount levied on other property for the school district's required local contribution under AS 14.17.410(b)(2).
- **WHEREAS,** electricity prices average  $24\phi/kWh$  on the Kenai Peninsula,  $20\phi/kWh$  in the Matanuska-Susitna Borough, and  $16\phi/kWh$  in Anchorage; and
- WHEREAS, in 2018, the State of Alaska Department of Natural Resources estimated that Cook Inlet Natural Gas generates 70% of the Alaska Railbelt's electricity and Cook Inlet Natural Gas currently generates 84% of Homer Electric Association Generation; and
- WHEREAS, according to an op-ed written by Ben Boettger titled, *Confronting Painful Truths* on Cook Inlet's Natural Gas Future that appeared in the May 21, 2021edition of the Anchorage Daily News, Cook Inlet gas producers have received tax credits worth \$1.44 billion, a sum that will total \$2.32 billion when remaining obligations are paid; and
- WHEREAS, Kenai Peninsula Borough ("KPB") electricity generation can be made more resilient and more cost competitive by diversifying power generation sources; and
- **WHEREAS**, the current war in Ukraine demonstrates the wisdom of diversifying electricity generation sources; and
- **WHEREAS,** according to LAZARD's 2020 Levelized Cost of Energy Analysis Report, wind and solar energy are the cheapest forms of new energy and there is potential for new generation sources to suppress future electricity prices in the KPB; and

- **WHEREAS,** an Independent Power Producer ("IPP") is defined as an entity that owns facilities to generate electric power for sale to public utilities regulated by the Regulatory Commission of Alaska; and
- **WHEREAS,** IPPs can bring value to a cooperative utility by accessing capital and bearing risk for a fixed fee contract; and
- **WHEREAS,** the IPP model can add economic opportunity, bring local construction and maintenance jobs to the KPB and can increase the benefits of competitive market economics to electricity generation in the KPB; and
- WHEREAS, local electric cooperatives will enter into a Power Purchase Agreement only when their elected Board and the Regulatory Commission of Alaska determines it will benefit ratepayers going forward and these benefits are directly passed onto ratepayers; and
- **WHEREAS**, property taxes increase the cost of electricity generation and the price at which IPP's sell electricity to electric cooperatives, ultimately increasing the cost of electricity to cooperative members; and
- **WHEREAS,** property conveyed to Alaska Native entities pursuant to the Alaska Native Claims Settlement Act ("ANCSA") is tax exempt by law; however if the property is sold or leased to a third party, or otherwise developed, the property, or the portion of the land that is subject to a lease, must be taxed at full and true value; and
- WHEREAS, reducing KPB property taxes for IPP's will incentivize economic development in KPB, diversify its electricity generation and reduce the price at which IPP's can sell electricity to cooperative utilities and this benefit is passed onto KPB residents, businesses and governments; and
- **WHEREAS**, the borough currently provides for economic development property tax exemptions at KPB 5.12.116; and
- **WHEREAS**, applications for an exemption must be filed by January 15 of the assessment year, therefore, tax year 2023 will be the first year an entity may apply under the provisions specific to independent power producers; and
- WHEREAS, amending KPB 5.12.116 to broaden the available property tax exemption amount and duration for IPP's will encourage this type of economic development in KPB and the IPP industry is expected to benefit KPB residents, businesses and governments; and
- WHEREAS, Governor Dunleavy has called for 80% of Railbelt power to be renewable by 2030; and

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

### **SECTION 1.** That KPB 5.12.116 is amended as follows:

### 5.12.116. Economic development property exemption.

- A. The assessed value of property used for economic development, as defined in this section, is partially exempt from borough property taxes, under the conditions listed in this section.
- B. "Property used for economic development," as used in this section, means that part of real or personal property, as determined by the borough assessor, to which one or more of the following apply:
  - 1. Has not previously been taxed as real or personal property by the borough.
  - 2. That will be used to create a new business operation, or to reopen a business operation five years or more after ceasing all business operations within the borough and <u>is</u> used in a trade or business in a way that:
    - a. creates employment in the borough;
    - b. generates sales outside of the borough of goods or services produced in the borough;
    - c. materially reduces the importation of goods or services from outside the municipality; or
    - d. an exemption on the property enables a significant capital investmentin physical infrastructure that:
      - i. expands the tax base of the municipality; and
      - ii. will generate property tax revenue after the exemption expires.
  - 3. That has not been used in the same trade or business in another municipality for at least six months before the application for exemption is filed; this paragraph does not apply if the property was used in the same trade or business in an area that has been annexed to the municipality within six months before the application for deferral or exemption is filed; and this paragraph does not apply to inventories.

- C. Except as provided in 5.12.116(C)(1), the exemption shall be for a designated amount at the assembly's discretion up to fifty percent (50%) of the assessed value of the property, for a designated period up to five consecutive years at the assembly's discretion.
  - 1. Independent Power Producers shall be fully exempted up to the amount required by AS 14.17.410(b)(2) for a designated period up to fifteen consecutive years if the criteria in KPB 5.12.116(B) is met and if the applicant provides the borough assessor proof that the requirements under KPB 5.12.116(C)(1)(a) are satisfied.
    - a. To qualify as an Independent Power Producer under this section, an entity must
      - i. Own and operate a generation facility larger than two-megawatts; and
      - ii. Sell <u>electricity to a public utility which is regulated</u> by the Regulatory Commission of Alaska
- D. This exemption shall not apply to taxes levied for special services in a service area that is supervised by a board under AS 29.35.460.
- E. Any proposal must be approved by assembly resolution after public hearing.
- F. In order to qualify for this exemption, an applicant must file, with the borough assessor, a written application for the exemption no later than January 15 of each assessment year for which the exemption is sought. The application shall be on a form prescribed by the borough assessor, and shall include all information determined to be necessary by the assessor to determine eligibility of the property for the exemption. If the applicant fails or refuses to provide information required or requested by the assessor, within the time period set by the assessor, the exemption shall be denied. The assessor may make an independent investigation of the application or property in making a determination under this section. The assessor shall notify the applicant, in writing, of the assessor's determination on the application for exemption.
- G. An applicant delinquent in the registration for, filing of a return for, or payment of, any borough or city property or sales tax, or borough special assessment, may not be granted an exemption under this section.
- **SECTION 2.** SPECIAL NOTE: Pursuant to AS 29.45.050(m), notice is hereby given that this ordinance, if enacted, may be repealed by the voters through referendum.

**SECTION 3.** This ordinance is effective immediately upon enactment.

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

ATTEST:

Brent Johnson, Assembly President

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

### Kenai Peninsula Borough Assembly

### MEMORANDUM

- TO: Members, Kenai Peninsula Borough Assembly
- **FROM:** Brent Johnson, Assembly President BJ
- **DATE:** March 24, 2022
- RE: Ordinance 2022-22 Amending KPB 5.12.116 to Broaden Economic Development Property Tax Exemption for Independent Power Producers (Johnson)

This ordinance promotes continued economic development, power generation diversity, and energy security on the Kenai Peninsula. The public interest is served through diversification of economic opportunities and energy security and resilience.

This ordinance amends code in response to a proposed solar farm development on the Kenai Peninsula. The developers have provided public testimony, including a presentation made to the Assembly, that without a tax exemption the project is not economically viable. Notwithstanding, whether or not a future assembly decides to grant a tax exemption for the specific project in question is not the focus of this ordinance. This ordinance provides that a tax exemption is available for economic development properties that satisfy the criteria provided.

If this ordinance is enacted, an independent power producer (IPP) will be eligible for a tax exemption for up to 15 years. The exemption would provide for a full exemption up to the amount required by AS 14.17.410(b)(2) (2.65 mills) and shall not include taxes levied for special services in a service area. It is in the public's interest to encourage continued development, construction, and economic opportunities by encouraging new industry to initiate impactful projects on the Kenai Peninsula.

Your consideration of this ordinance is appreciated.