



# Kenai Peninsula Borough

144 North Binkley Street  
Soldotna, AK 99669

## Meeting Agenda Assembly

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

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Tuesday, September 6, 2022

6:00 PM

Betty J. Glick Assembly Chambers

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Meeting ID: 884 7373 9641 Passcode: 671108

### CALL TO ORDER

### PLEDGE OF ALLEGIANCE

### INVOCATION

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

### 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 4557 August 23, 2022 Regular Assembly Meeting Minutes*  
*Resolution 2022-049 Safe Streets and Roads Grant \$1.2M*  
*Ordinance 2022-19-15 Lowell Point Landslide Funds*  
*Ordinance 2022-19-16 Bear Creek Pumper Truck*  
*KPB 4553 Petition to Vacate Joe Luy Court and Bismarck Court*  
*KPB 4565 Mayor Charlie Pierce's Resignation*

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

*Ordinance 2022-19-09 Substance Abuse Disorder Treatment*  
*Ordinance 2022-19-10 Purchase of EM2 Stream Table*  
*Ordinance 2022-19-11 Appropriating to Fund Incomplete Culverts*  
*Ordinance 2022-19-12 Accepting Commercial Vessel Tax Proceeds*  
*Ordinance 2022-19-13 Accepting Funds from the EPA*  
*Ordinance 2022-19-14 Appropriating Funds for Slope Repair*  
*Ordinance 2022-37 Late Filed Exemption*  
*Ordinance 2022-39 Lookout Dr Utility Special Assessment District*  
*Ordinance 2022-38 Release of Conservation Deed Restriction*

## APPROVAL OF MINUTES

[KPB-4557](#) August 23, 2022 Regular Assembly Meeting Minutes

*Attachments:* [082322 Regular Assembly Meeting Minutes](#)

## PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA

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

## PUBLIC HEARINGS ON ORDINANCES

*(Testimony limited to 3 minutes per speaker)*

Ordinances referred to Finance Committee

[2022-19-09](#) An Ordinance Accepting and Appropriating the Emergency Responder Integration of Technology to Enhance Substance Use Disorder Treatment Linkage to Care Grant Funds in the Amount of \$15,000 (Mayor)

*Attachments:* [Ordinance 2022-19-09](#)  
[Memo](#)  
[Sponsorship Opportunity Letter](#)  
[Award Letter](#)

[2022-19-10](#) An Ordinance Appropriating \$12,517.00 to Purchase an EM2 Stream Table to Expand Watershed Education and Outreach at the Donald E. Gilman River Center (Mayor)

*Attachments:* [Ordinance 2022-19-10](#)  
[Memo](#)  
[Stream Table EM2 Briefing](#)  
[Stream Table Quote](#)  
[Letter of Support](#)

[2022-19-11](#) An Ordinance Appropriating \$5,317.28 in Surety Bonds Claimed from a Contractor to Fund Incomplete Culvert Repairs on Taurus Court (Mayor)



Attachments:      [Ordinance 2022-19-11](#)  
                             [Memo](#)  
                             [Advisory Board Recommendations](#)

[2022-19-12](#)      An Ordinance Accepting and Appropriating the Commercial Passenger Vessel Tax Proceeds Received from the State of Alaska Under the Federal Pass-Through Program, American Rescue Plan Act of 2021 in the Amount of \$612,640 and Allocating \$577,195 to the City of Seward and \$35,445 to the City of Homer (Mayor)

Attachments:      [Ordinance 2022-19-12](#)  
                             [Memo](#)  
                             [City of Seward Request](#)  
                             [City of Homer Request](#)

[2022-19-13](#)      An Ordinance Accepting and Appropriating Congressionally Directed Spending Grant Funds from the Environmental Protection Agency, Appropriating the Required Twenty Percent Match Funds from the General Fund, and Re-Allocating State and Local Fiscal Recovery Funds from the Solid Waste Department to School Pay-Go and Cybersecurity Projects (Mayor)

Attachments:      [Ordinance 2022-19-13](#)  
                             [Memo: Solid Waste Funds Explanation](#)  
                             [Memo](#)  
                             [Summary of Project and Funding Sources](#)  
                             [Fund Utilization Table](#)

[2022-19-14](#)      An Ordinance Appropriating \$225,000 from the Land Trust Fund for Slope and Drainage Repairs in Cooper Landing and Authorizing the Disposal of up to 1.25-Acres of Land to Bunkhouse Properties, LLC (Mayor)

Attachments:      [Ordinance 2022-19-14](#)  
                             [Memo](#)  
                             [Work Agreement](#)  
                             [Reference Copy R2022-029](#)

[2022-37](#)      An Ordinance Authorizing the Assessor to Accept One Late-Filed Senior Citizen Exemption Application Filed after March 31 and Providing an Exception to KPB 5.12.040(B) (Mayor)

Attachments:      [Ordinance 2022-37](#)  
                             [Memo](#)

[2022-39](#)      An Ordinance of Assessment Confirming the Assessment Roll for the

Lookout Drive Utility Special Assessment District and Establishing the Method for Terminating Assessments and Making Refunds to Property Owners (Mayor)

Attachments:

[Ordinance 2022-39](#)

[Memo](#)

[Final Assessment Roll](#)

[Reference Copy R2022-005](#)

[Reference Copy O2020-19-36](#)

Ordinances referred to Lands Committee

[2022-36](#)

An Ordinance Amending KPB Chapter 21.25 and KPB Chapter 21.29 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley) (Referred to Lands Committee)

Attachments:

[Ordinance 2022-36](#)

[Derkevorkian Amendments #1-#14](#)

[Sectional Analysis with Potential Amendments - Planning Department](#)

[Tupper Amendments #1-6](#)

[Administrative Amendments #1-#9](#)

[Johnson Amendments #1-#6](#)

[Memo](#)

[Final Material Site Sectional Analysis](#)

[Material Site Subcommittee Presentation](#)

[Review Notes by Charley Palmer](#)

[Takings Overview presentation](#)

[Public Comments](#)

[102522 Public Comments](#)

[Reference Copy R2018-004 SUB](#)

[Reference Copy O2019-30](#)

[Reference Copy O2021-41](#)

[Reference Copy O2021-41 SUB](#)

[2022-38](#)

An Ordinance Authorizing the Release of a Portion of a Conservation Easement Deed Restriction on a Parcel of Land Located in Cooper Landing and to Acquire and Classify a 30-Foot-Wide Tract of Land (Mayor)

**Attachments:**      [Ordinance 2022-38](#)  
                              [Memo](#)  
                              [Advisory Board Recommendations](#)  
                              [Release of Deed Restriction](#)  
                              [Half-Mile Notice](#)  
                              [Maps](#)  
                              [Reference Copy O1991-20](#)

Ordinances referred to Policies and Procedures Committee

[2022-32](#)      An Ordinance Amending Borough Code to Remove Requirements for Newspaper Publication of Delinquent Sales Tax Lists and Public Posting of Certificates of Registration Lists and Providing Instead for Publication of Such Information on the Borough Website (Mayor, Cox, Hibbert)

**Attachments:**      [Ordinance 2022-32](#)  
                              [Memo](#)

[2022-35](#)      An Ordinance Amending KPB 14.31, Special Assessments – Road Improvements, to Adjust Applicable Deadlines Regarding Application and Review of a Road Improvement Assessment District (Mayor)

**Attachments:**      [Ordinance 2022-35](#)  
                              [Memo](#)

## **NEW BUSINESS**

### **1. Resolutions**

Resolutions referred to Policies and Procedures Committee

[2022-049](#)      A Resolution Authorizing the Kenai Peninsula Borough, as the Lead Agency in Partnership with the Cities within the Kenai Peninsula Borough, to Apply for the Safe Streets and Roads for All Assistance Grant through the Office of the Secretary of Transportation, U.S. Department of Transportation in the Amount of \$1,200,000 (Mayor)

**Attachments:**      [Resolution 2022-049](#)  
                              [Memo](#)  
                              [City of Soldotna Resolution 2022-037](#)

### **2. Ordinances for Introduction**

Ordinances for Introduction and referred to Finance Committee

[2022-19-15](#) An Ordinance Accepting Grant Funds from the State of Alaska Division of Homeland Security & Emergency Management and the Federal Emergency Management Agency to Reimburse Costs Associated with Disaster Recovery Efforts Related to the Lowell Point Road Landslide (Mayor)

Attachments: [Ordinance 2022-19-15](#)  
[Memo](#)

[2022-19-16](#) An Ordinance Appropriating Funds from the Bear Creek Fire Service Area Operating Fund Balance for the Cost of Repairs to A Rescue Pumper (Mayor)

Attachments: [Ordinance 2022-19-16](#)  
[Memo](#)  
[Advisory Board Recommendations](#)

Other

Other items referred to Lands Committee

[KPB-4553](#) Petition to Vacate Joe Luy Court and Bismarck Court KPB File 2022-117V

[Clerk's Note: At its regularly scheduled meeting of August 22, 2022 the Kenai Peninsula Borough Planning Commission approved the proposed vacation by unanimous vote.]

Attachments: [KPB- 4553 Petition to Vacate Joe Luy Court Packet](#)

Other Items referred to Policies and Procedures Committee

\*b. [KPB-4565](#) Accepting Mayor Charlie Pierce's Resignation and Declaring the Office of the Borough Mayor Vacant

Attachments: [Legal Department Memo - Vacancy in the Office of the Mayor](#)

[KPB-4579](#) Confirming the appointment of Mike Navarre to the position of Borough Mayor. Mr. Navarre's appointment is effective October 1, 2022 through certification of a special election to fill the position and up until the elected candidate is sworn in and takes office.

[Clerk's Note: Executive Session may be held.]

Attachments: [Memo](#)  
[Mike Navarre Resume](#)

**MAYOR'S REPORT**

## Mayor's Report Cover Memo

[KPB-4563](#) Mayor's Report Cover Memo

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

1. Assembly Requests/Responses - None.
2. Agreements and Contracts
  - a. [KPB-4560](#) Alaska Land Mobile Radio Communications Systems Agreement  
Attachments: [ALMR Membership Agreement](#)
3. Other
  - a. [KPB-4561](#) Budget Revisions - July 2022  
Attachments: [Budget Revisions July 2022](#)
  - b. [KPB-4562](#) Revenue-Expenditure Report - July 2022  
Attachments: [Revenue-Expenditure Report - July 2022](#)

**PUBLIC COMMENTS AND PUBLIC PRESENTATIONS****ASSEMBLY COMMENTS****PENDING LEGISLATION**

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

1. [2022-36](#) An Ordinance Amending KPB Chapter 21.25 and KPB Chapter 21.29 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley) (Referred to Lands Committee)

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

2.      [2022-40](#)      An Ordinance Amending KPB 14.31.130 Relating to Notice of Assessments for Road Improvement Special Assessment Districts to Ensure Code Compatibility with Software Constraints (Mayor)

Attachments:      [Ordinance 2022-40](#)  
                              [Memo](#)

3.      [2022-41](#)      An Ordinance Amending KPB Chapter 21.02 to Establish an Advisory Planning Commission in the Nikiski Area (Mayor)

Attachments:      [Ordinance 2022-41](#)  
                              [Amendment Memo](#)  
                              [Memo](#)  
                              [Advisory Board Recommendation](#)  
                              [Proposed Boundary](#)  
                              [Alternative Proposed Boundary](#)  
                              [Statistics](#)  
                              [Letter of Interest](#)  
                              [Petition of Interest](#)  
                              [092022 Public Comment](#)

4.      [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]

Attachments:

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

## INFORMATIONAL MATERIALS AND REPORTS

[KPB-4564](#) Department of Transportation Seward Highway - Alyeska Highway Intersection Project Overview

Attachments: [DOT Alyeska-Seward Hwy FactSheet Project Overview \(11x17\)](#)

## ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS

1. Next meeting Information:

September 20, 2022 Assembly Material Site Subcommittee Meeting

Time TBD Betty J. Glick Assembly Chambers

Borough Administration Building

Remote participation available through Zoom

Meeting ID: 884 7373 9641 Passcode: 671108

September 20, 2022 Regular Assembly Meeting

6:00 PM Betty J. Glick Assembly Chambers

Borough Administration Building

Remote participation available through Zoom

Meeting ID: 884 7373 9641 Passcode: 671108

## ADJOURNMENT

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

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

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





# Kenai Peninsula Borough

144 North Binkley Street  
Soldotna, AK 99669

## 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*

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Tuesday, August 23, 2022

6:00 PM

Betty J. Glick Assembly Chambers

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Meeting ID: 884 7373 9641 Passcode: 671108

### CALL TO ORDER

### PLEDGE OF ALLEGIANCE

### INVOCATION

[Clerk's Note: The invocation was given by Stephen Brown.]

### ROLL CALL

**Present:** 8 - Jesse Bjorkman, Tyson Cox, Brent Hibbert, Brent Johnson, Bill Elam, Lane Chesley, Cindy Ecklund, and Mike Tupper

**Excused:** 1 - Richard Derkevorkian

Also present were:

Aaron Rhoades, Chief of Staff

Sean Kelley, Borough Attorney

Brandi Harbaugh, Finance Director

Johni Blankenship, Borough Clerk

Michele Turner, Deputy Borough Clerk

### COMMITTEE REPORTS

### APPROVAL OF AGENDA AND CONSENT AGENDA

Hibbert moved to approve the agenda and consent agenda.

[KPB-4526](#)

August 9, 2022 Regular Assembly Meeting Minutes  
approved.

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

[2021-19-59](#) An Ordinance Recording FY2022 Expenditures Paid by the State of Alaska Department of Administration, Division of Retirement & Benefits on Behalf of the Kenai Peninsula Borough Toward the Borough's Unfunded PERS Liability (Mayor)

**This Ordinance was enacted.**

[2021-19-60](#) An Ordinance Expanding the Scope of Work for the South Peninsula Hospital's Air Conditioning for Long-Term Care and Rehab Project (Mayor)

*[Clerk's Note: The final Whereas clause of Ordinance 2021-19-60 was deleted,*

*[AT ITS MEETING ON \_\_\_\_, THE SPHI FINANCE COMMITTEE  
DISCUSSED THIS ORDINANCE AND RECOMMENDED \_\_\_\_;]]*

**This Ordinance was enacted as amended.**

[2022-19-07](#) An Ordinance Appropriating up to \$4,565,000 from the Land Trust Fund, Fund Balance to be Transferred to the Land Trust Investment Fund Representing the Fiscal Year 2022 Transfer of Land Sales Revenue to the Land Trust Investment Fund per KPB 5.20.080(B) (Mayor)

**This Budget Ordinance was enacted.**

[2022-33](#) An Ordinance Authorizing the Assessor to Accept One Late-Filed Disabled Veteran Exemption and Four Late-Filed Senior Citizen Exemption Applications Filed After March 31 and Providing an Exception to KPB 5.12.040(B) (Mayor)

**This Ordinance was enacted.**

[2022-34](#) An Ordinance Authorizing the Assessor to Accept One Late-Filed Community Purpose Exemption Application Filed After March 31 and Providing an Exception to KPB 5.12.040(B) (Mayor)

**This Ordinance was enacted.**

[2022-19-08](#) An Ordinance Authorizing the Acquisition of Real Property Located in Anchor Point, Alaska on Behalf of Western Emergency Services through an Interfund Loan from the Land Trust Investment Fund, Appropriating Loan Proceeds for the Property Acquisition, and Appropriating Western Emergency Service Area Operating Funds for

the Annual Loan Payment to the Land Trust Investment Fund (Mayor)

**This Budget Ordinance was enacted.**

[2022-31](#)

An Ordinance Authorizing the Release of a Commercial Deed Restriction on a Parcel of Land Located in Cooper Landing Originally Conveyed by the Kenai Peninsula Borough (Mayor)

**This Ordinance was enacted.**

[2022-19-09](#)

An Ordinance Accepting and Appropriating the Emergency Responder Integration of Technology to Enhance Substance Use Disorder Treatment Linkage to Care Grant Funds in the Amount of \$15,000 (Mayor) (Hearing on 09/06/22)

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

[2022-19-10](#)

An Ordinance Appropriating \$12,517.00 to Purchase an EM2 Stream Table to Expand Watershed Education and Outreach at the Donald E. Gilman River Center (Mayor) (Hearing on 09/06/22)

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

[2022-19-11](#)

An Ordinance Appropriating \$5,317.28 in Surety Bonds Claimed from a Contractor to Fund Incomplete Culvert Repairs on Taurus Court (Mayor) (Hearing on 09/06/22)

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

[2022-19-12](#)

An Ordinance Accepting and Appropriating the Commercial Passenger Vessel Tax Proceeds Received from the State of Alaska Under the Federal Pass-Through Program, American Rescue Plan Act of 2021 in the Amount of \$612,640 and Allocating \$577,195 to the City of Seward and \$35,445 to the City of Homer (Mayor) (Hearing on 09/06/22)

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

[2022-19-13](#)

An Ordinance Accepting and Appropriating Congressionally Directed Spending Grant Funds from the Environmental Protection Agency, Appropriating the Required Twenty Percent Match Funds from the General Fund, and Re-Allocating State and Local Fiscal Recovery Funds from the Solid Waste Department to School Pay-Go and Cybersecurity Projects (Mayor) (Hearing on 09/06/22)

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

[2022-37](#)

An Ordinance Authorizing the Assessor to Accept One Late-Filed

Senior Citizen Exemption Application Filed after March 31 and Providing an Exception to KPB 5.12.040(B) (Mayor) (Hearing on 09/06/22)

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

[2022-39](#)

An Ordinance of Assessment Confirming the Assessment Roll for the Lookout Drive Utility Special Assessment District and Establishing the Method for Terminating Assessments and Making Refunds to Property Owners (Mayor) (Hearing on 09/06/22)

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

[2022-40](#)

An Ordinance Amending KPB 14.31.130 Relating to Notice of Assessments for Road Improvement Special Assessment Districts to Ensure Code Compatibility with Software Constraints (Mayor) (Hearing on 09/20/22)

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

[2022-38](#)

An Ordinance Authorizing the Release of a Portion of a Conservation Easement Deed Restriction on a Parcel of Land Located in Cooper Landing and to Acquire and Classify a 30-Foot-Wide Tract of Land (Mayor) (Hearing on 09/06/22)

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

[2022-41](#)

An Ordinance Amending KPB Chapter 21.02 to Establish an Advisory Planning Commission in the Nikiski Area (Mayor) (Hearing on 09/20/22)

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

[2022-19-14](#)

An Ordinance Appropriating \$225,000 from the Land Trust Fund for Slope and Drainage Repairs in Cooper Landing and Authorizing the Disposal of up to 1.25-Acres of Land to Bunkhouse Properties, LLC (Mayor) (Hearing on 09/06/22)

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

[KPB-4508](#)

Approving a New Liquor License and Restaurant Designation Permit, Miller's Landing DBA Barrio Coffee & Kitchen License No. 6047 (Borough Clerk)

**approved.**

[KPB-4505](#)

Petition to Vacate Portions of Mushroom Street, a 60 Foot Right-of-Way, to Allow a Realignment, KPB File 2022-095V (Mayor)

[Clerk's Note: At its regularly scheduled meeting of August 8, 2022 the Kenai Peninsula Borough Planning Commission approved the proposed vacation by unanimous vote.]

approved.

[KPB-4522](#) Confirmation of Justen Huff as the Director of Human Resources (Mayor)

approved.

[KPB-4548](#) Approving a Restaurant Designation Permit filed by Gwin's Lodge/Gwin's Roadhouse License No. 484 (Borough Clerk)

approved.

#### Approval of the Agenda and Consent Agenda

*President Johnson called for public comment with none being offered.*

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

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

**Excused:** 1 - Derkevorkian

#### PRESENTATIONS WITH PRIOR NOTICE

1. [KPB-4506](#) KPB Assembly Homer Large Vessel Harbor Expansion Project Update

*[Clerk's Note: Brian Hawkins, Homer Harbor Master gave an update of the Homer Harbor Expansion Project to the assembly.]*

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

President Johnson called for public comment.

**Tim Dillon**, Kenai Peninsula Economic Development District spoke to the assembly regarding the broadband data speed survey project on the peninsula.

The following people spoke in opposition to Ordinance 2022-36:

**Hans Bilben**, Anchor Point

**Ed Martin III**

**Linn Whitmore**, Anchor Point

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

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**ITEMS NOT COMPLETED FROM PRIOR AGENDA**

None.

**MAYOR'S REPORT**

1. Assembly Requests/Responses - None.
2. Agreements and Contracts
  - a. [KPB-4511](#) Authorization to Award a Contract for ITB22-051 Skyline Drive Asphalt Rehabilitation
  - b. [KPB-4512](#) Authorization to Award a Contract for ITB22-052 Walters St., Wilderness Lane, Sara St., Frontier Lane CIP
  - c. [KPB-4513](#) Authorization to Award a Contract for ITB22-001 Mansfield Avenue CIP (S7MAN)
  - d. [KPB-4514](#) Authorization to Award a Contract for ITB22-058 Chinulna Court Asphalt Rehabilitation
  - e. [KPB-4515](#) Port Graham Landfill O&M - Sole Source Contract
  - f. [KPB-4516](#) Authorizing Waiver of Formal Bidding - Relocate Portable Classroom
  - g. [KPB-4517](#) Routing for revisions to SBCFSA Board approved: By-Laws, Emergin Situation Policy & Permit Policy Review
  - h. [KPB-4518](#) Authorization to Award a Contract for RFP22-025 FY23 KPB Tourism/Economic Development Campaign
  - i. [KPB-4519](#) Authorization to Award a Contract for RFP22-026 FY Municipal Government Services Public Relations
  - j. [KPB-4520](#) Request for Proprietary Procurement under 5.28.280(B)(1), Emergency Procurement under KPB 5.28.290 and for Waiver of Formal Bidding Procedures under KPB 5.28.300 for Testing, Scope Identification and Removal of Contained Fluids
  - k. [KPB-4521](#) Alaska Land Mobile Radio Communication Systems Membership Agreement
  - l. [KPB-4523](#) North Peninsula Recreation Service Area Trail Lighting Project

3. Other

- a. [KPB-4524](#) Tax Adjustment Request Approval
- b. [KPB-4525](#) Capital Projects Reports - June 30, 2022

## **PUBLIC COMMENTS AND PUBLIC PRESENTATIONS**

President Johnson called for public comment.

The following people spoke in support of Ordinance 2022-41 as written:

**Stacy Oliva**, Nikiski  
**Heidi Covey**, Nikiski

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

## **ASSEMBLY COMMENTS**

Assembly Member Ecklund stated she would like to receive more information and project updates when Ordinance 2022-19-13 and Ordinance 2022-19-14 were back before the assembly for public hearing.

Assembly Member Chesley thanked the staff for all their hard work and support to the assembly.

Assembly Member Bjorkman echoed Ms. Ecklund's comments regarding Ordinances 2022-19-13 and 2022-19-14. He thanked Nikiski constituents for supporting their community and involvement with the establishment of the Nikiski Advisory Planning Commission. Mr. Bjorkman thanked everyone for attending the meeting and providing comments regarding Ordinance 2022-36. He further stated it was important to have a quality product, so everyone would know what to expect. He wished everyone a good evening.

Assembly Member Tupper stated he was excited to see the Homer Harbor Expansion project was moving forward.

Assembly Member Cox gave a shout out to his oldest son who was newly attending college in Montana and wished him all the best. Mr. Cox wished his wife a happy 23rd Anniversary.

Assembly Member Elam congratulated Mr. Cox on his anniversary. He thanked everyone for attending the meeting and for everyone's efforts and preparation with

Ordinance 2022-36. Mr. Elam welcomed the new HR Director, Justen Huff. He stated the importance of everyone's participation in the peninsula's broadband data speed survey project as presented by Tim Dillon, Kenai Peninsula Economic Development District. Mr. Elam welcomed the teachers and students back to school. He wished everyone a good evening.

Assembly Vice President Hibbert thanked everyone for their participation and testimony. He stated he was thankful for the Homer Harbor Expansion project presentation as well. Mr. Hibbert welcomed the new HR Director, Justen Huff. He wished everyone a great evening.

President Johnson echoed Mr. Hibbert's comments and stated he appreciated everyone.

MOTION: Vice President Hibbert moved to go into executive session to provide direction to the borough attorney regarding the handling of a specific legal matter, the immediate knowledge of which would have an adverse effect upon the finances of the borough. Included in this executive session will be the assembly members and the borough attorney.

**The motion to go into executive session carried by the following vote:**

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

**Excused:** 1 - Derkevorkian

[Clerk's Note: The assembly members and borough attorney convened in executive session.]

MOTION: Vice President Hibbert moved to come out of executive session.

**The motion to come out of executive session carried by the following vote:**

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

**Excused:** 1 - Derkevorkian

## **INFORMATIONAL MATERIALS AND REPORTS**

None.

## **ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS**



September 6, 2022 Assembly Material Site Subcommittee Meeting

Time TBD Betty J. Glick Assembly Chambers

Borough Administration Building

Remote participation available through Zoom

Meeting ID: 884 7373 9641 Passcode: 671108

September 6, 2022 Regular Assembly Meeting

6:00 PM Betty J. Glick Assembly Chambers

Borough Administration Building

Remote participation available through Zoom

Meeting ID: 884 7373 9641 Passcode: 671108

## **ADJOURNMENT**

With no further business to come before the assembly, President Johnson adjourned the meeting at 8:15 p.m.

I certify the above represents accurate minutes of the Kenai Peninsula Borough Assembly meeting of August 23, 2022.

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

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

Introduced by:	Mayor
Date:	08/23/22
Hearing:	09/06/22
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-19-09**

**AN ORDINANCE ACCEPTING AND APPROPRIATING THE EMERGENCY  
RESPONDER INTEGRATION OF TECHNOLOGY TO ENHANCE SUBSTANCE USE  
DISORDER TREATMENT LINKAGE TO CARE GRANT FUNDS  
IN THE AMOUNT OF \$15,000**

**WHEREAS,** Western Emergency Services applied for \$15,000 from the State of Alaska Department of Health and Social Services Office of Substance Misuse and Addiction Prevention and the State Office of Emergency Medical Services; and

**WHEREAS,** the funds are federal pass-through funds from the Center for Disease Control and Prevention Overdose Data to Action; and

**WHEREAS,** the funds are for the purchase of two smartboards which will support the increased ability to share data, improve training, and provide improved response to addiction, and treatments; and

**WHEREAS,** it is in the best interests of the Borough to accept the funds from the State of Alaska Department of Health and Social Services Office of Substance Misuse and Addiction Prevention and the State Office of Emergency Medical Services;

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

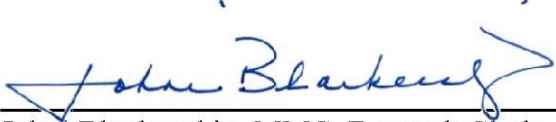
**SECTION 1.** The amount of \$15,000.00 in federal funds received from the State of Alaska Department of Health and Social Services Office of Substance Misuse and Addiction Prevention and the State Office of Emergency Medical Services be appropriated to account 209.51410.23SMT.49999 for Western Emergency Services to procure two smartboards.

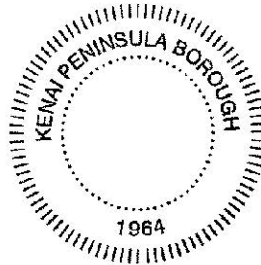
**SECTION 2.** That upon enactment, this ordinance is retroactively effective on July 1, 2022.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY OF SEPTEMBER, 2022.**

  
Brent Johnson, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



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

# Kenai Peninsula Borough

## Community & Fiscal Projects

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### MEMORANDUM

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

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

**FROM:** Rachel Chaffee, Community & Fiscal Projects Manager *RC*  
Jon Marsh, Western Emergency Services Chief *JM*

**DATE:** August 11, 2022

**RE:** Ordinance 2022-19-09, Accepting and Appropriating the  
Emergency Responder Integration of Technology to Enhance  
Substance Use Disorder Treatment Linkage to Care Grant Funds in the  
Amount of \$15,000 (Mayor)

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The State of Alaska, Department of Health and Social Services Office of Substance Misuse and Addiction Prevention (OSMAP) and the State Office of Emergency Medical Services (SOEMS) granted Western Emergency Services \$15,000 for the purchase of two smartboards.

The smartboards are to be used to connect the stations and the community in training and data sharing. These technology advancements will also enable Western Emergency Services to learn as a team and bring a higher quality of care to those in crisis.

These funds are federal funds passed through the Center for Disease Control and Prevention Overdose Data to Action. There are no match funds required.

The effective date of the grant and start date for allowable expenditures is July 1, 2022.

<b>FINANCE DEPARTMENT</b>	
<b>MATCH &amp; ADMIN FEE FUNDS/ACCOUNT VERIFIED</b>	
Account:	<u>209.51410.23SMT.49999</u>
Amount:	<u>\$15,0000.00</u>
By	<i>CE</i> Date: <u>8/10/2022</u>



## **WESTERN EMERGENCY SERVICES**

P.O. Box 350 Anchor Point, AK 99556  
72440 Milo Fritz Ave Anchor Point, AK 99556  
907-567-3342 Station 1  
907-235-6700 Station 3

December 3, 2021

Re: Sponsorship Opportunity: Emergency Responder Agency Integration of Technology to Enhance Linkage to Care SUD Treatment

To The State of Alaska:

Thank you for providing our department an opportunity to apply for the Emergency Responder/Public Safety Integration of Technology to Enhance Substance Use Disorder Treatment Linkage to Care Sponsorships. Funding for a technology purchase would assist our department with accessibility and training of personnel on substance use, associated treatments, and behavioral health issues.

Western Emergency Services is a newly formed service area of less than one year, created by merging two previously existing smaller agencies, Anchor Point Fire and Emergency Medical Services and Ninilchik Emergency Services. While this merger was much needed and provided the area with more reliable fire and EMS responses, these two stations are located twenty (20) miles apart. This has identified a unique challenge for our administration as we attempt to provide training to our personnel over the long distance, continue to staff stations, and meet any 911 response needs for the communities.

Even though we are a combination department, our main staffing coverage is two career responders per station. While our volunteer staff is active, there is no guarantee they would be available for station coverage. In many instances this does not allow the career staff from both stations to participate person for joint training. Additionally, the volunteers face these same issues as the administration must be mindful not deplete personnel and/or resources in one area during training events.

Neither station is equipped with technology we can use for effective, on-line interactive training. Connecting the two stations, and their personnel, which allows them to interact and train together as a cohesive unit is our vision. We are now looking for funding sources to assist us in purchasing current technology that will bridge our distance gap and introduce a way for us to bring current, relevant, and interactive training into the stations for our personnel. To help assist with this training need, we are looking for funding to purchase two SMART boards, at a cost of \$7,500 each and a total of \$15,000.00.

A vast portion of the medical training we provide or receive has a component of interactive or distance learning which can come from anywhere in the US. Our local resources range from hospitals and physicians to our own personnel. The teaching can range from continuing

education lectures to certification courses to scenario-based sessions. During our EMS initial certification and refresher classes there is a component of behavior health and opioid/addiction along with treatment specific information for overdoses and the skill of medication administration for Naloxone. All prehospital providers participate multiple times a year in continuing education to review and practice dealing with behavioral and opioid emergencies. Additionally, responders receive instruction on the behavioral emergencies and opioid emergencies the department responded to through HIPPA compliant case reviews with the department Medical Director each month.

Addiction and behavioral emergencies are a part of our community, affecting both family and neighbors. We see the requests for assistance reflected within our call volume, and it is our commitment to train our responders to access, identify and respond to these emergencies properly.

The addition of SMART boards at our two stations would allow us to bring our personnel together, allowing them to listen, learn and share information on addiction, opioid use and treatments, and behavioral emergencies. It would allow us to learn together and provide the same professional care to our patients. This in turn brings a higher quality of care to those in crisis and in need of care during an opioid or behavioral emergency.

Thank you for considering our request and we look forward to hearing from you.

A handwritten signature in blue ink, appearing to read 'Jon Marsh', with a stylized, cursive script.

Jon Marsh  
Fire Chief, WES

## Chaffee, Rachel

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**From:** Habib, Elana L (HSS) <elana.habib@alaska.gov>  
**Sent:** Thursday, June 16, 2022 4:43 PM  
**To:** Marsh, Jon  
**Cc:** Kadel, Terry L (HSS); Welton, Theresa M (HSS); Finney, Sonya L (HSS); Christina Bachmeier  
**Subject:** <EXTERNAL-SENDER> Sponsorship Award RE: Sponsorship Request  
**Attachments:** WES Technology Sponsorship Letter.pdf

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

Dear Chief Jon Marsh,

The State of Alaska, Department of Health and Social Services' Office of Substance Misuse and Addiction Prevention (OSMAP) and the State Office of Emergency Medical Services (SOEMS) is pleased to grant your agency Western Emergency Services sponsorship request for \$15,000.00 to fund educational development through the Sponsorship Funding Opportunity for Emergency Responder Integration of Technology to Enhance Substance Use Disorder Treatment Linkage to Care. Your agency should expect to receive this funding by July 15, 2022.

This sponsorship is funded by the Center for Disease Control and Prevention (CDC) Overdose Data to Action (OD2A) funding opportunity. Together, we request an overview of progress on how this technology is fulfilling your projected goals for two SMART Boards to connect training with topics that include responding to opioid emergencies between Anchor Point Fire and Emergency Medical Services, and Ninilchik Emergency Services as explained in your letter of request attached.

We ask that you provide a report on your progress with this funding by September 30, 2022; and please submit a report on deliverable accomplishment by December 31, 2022. Your report will assist in providing future program development and proof of concepts for OD2A programming. Your report can be a simple narrative of how this technology assisted in achieving your program's goals, any challenges that arose, how these were overcome, and if you would recommend the purchase of this technology and programming to other agencies. This report can be submitted via email to [terry.kadel@alaska.gov](mailto:terry.kadel@alaska.gov).

Funding will be directly deposited to the vendor account that was provided.

Thank you for your sponsorship request, and we look forward to hearing about the outcomes of your activities.

Best Regards,

Elana Habib, Public Health Specialist  
Office of Substance Misuse and Addiction Prevention  
Department of Health and Social Services

Terry Kadel, Program Specialist  
Department of Health and Social Services, Office of EMS

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**From:** HSS DPH OSMAP (HSS sponsored) <hss.dph.osmap@alaska.gov>  
**Sent:** Tuesday, December 7, 2021 7:51 AM  
**To:** Kadel, Terry L (HSS) <terry.kadel@alaska.gov>  
**Cc:** Habib, Elana L (HSS) <elana.habib@alaska.gov>  
**Subject:** FW: Sponsorship Request

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**From:** Marsh, Jon <[JMarsh@kpb.us](mailto:JMarsh@kpb.us)>  
**Sent:** Monday, December 6, 2021 5:47 PM  
**To:** HSS DPH OSMAP (HSS sponsored) <[hss.dph.osmap@alaska.gov](mailto:hss.dph.osmap@alaska.gov)>  
**Subject:** Sponsorship Request

Please see attached letter.

Thanks

Jon Marsh  
Fire Chief  
Western Emergency Services  
15727 Kingsley Road  
Ninilchik, AK 99639



(907) 567-3342 Station 1  
(907) 235-6700 Station 3  
(907) 299-4446 Cell  
[JMarsh@kpb.us](mailto:JMarsh@kpb.us)



Introduced by:	Mayor
Date:	08/23/22
Hearing:	09/06/22
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-19-10**

**AN ORDINANCE APPROPRIATING \$12,517 TO PURCHASE AN EM2 STREAM  
TABLE TO EXPAND WATERSHED EDUCATION AND OUTREACH AT THE  
DONALD E. GILMAN RIVER CENTER**

**WHEREAS,** one of the River Center’s primary objectives is to provide watershed education to residents across the Kenai Peninsula; and

**WHEREAS,** past outreach has been geared toward helping residents find unique solutions that will protect their waterfront properties from erosion, through a combination of site visits, written handouts, and similar resources; and

**WHEREAS,** in 2021, the River Center was able to partner with the Kenai Watershed Forum to debut the EM2 Stream Table (“EM2”) to the public, to simulate complex watershed functions, erosion and runoff where it was received with overwhelming demand and support; and

**WHEREAS,** the EM2’s high demand demonstrates a need for a second EM2, one that can be used to provide landowner education at the River Center; and

**WHEREAS,** the total cost of the new EM2 comes to \$12,517.00, with the cost divided between the Kenai Peninsula Borough (“KPB”), and the U.S. Fish and Wildlife Service via a pass-through agreement with the Kenai Soil and Water Conservation District and will be an asset of the KPB;

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

**SECTION 1.** The mayor is hereby authorized to accept funds and execute any agreements and other documents deemed necessary to expend the funds and to fulfill the intent and purpose of this ordinance.

**SECTION 2.** Funds in the amount of \$6,000.00 are appropriated from the General Fund fund balance to account 100.21135.23TAB.49999 to provide for an EM2 table and associated costs.

**SECTION 3.** Funds in the amount of \$6,517.00 received from the Kenai Soil and Water Conservation District are appropriated to account 100.21135.23TAB.49999 to provide for an EM2 table and associated costs.

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

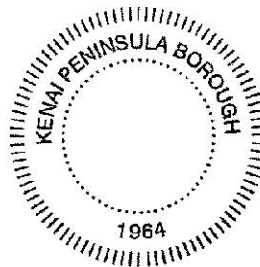
**SECTION 5.** That this ordinance shall be effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY OF SEPTEMBER, 2022.**

  
Brent Johnson, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



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

# Kenai Peninsula Borough

## Planning Department – River Center

### MEMORANDUM

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

**THRU:** Charlie Pierce, Mayor *CP*  
Robert Ruffner, Planning Director *RR*  
Rachel Chaffee, Community & Fiscal Projects Manager *RC*  
Brandi Harbaugh, Finance Director *BH*

**FROM:** Samantha Lopez, River Center Manager *SL*

**DATE:** August 11, 2022

**RE:** Ordinance 2022-19-10, Appropriating \$12,517.00 to Purchase an EM2 Stream Table to Expand Watershed Education and Outreach at the Donald E. Gilman River Center (Mayor)

One of the River Center's primary objectives is to provide watershed education to residents across the Kenai Peninsula. Much of our outreach is geared toward helping residents find unique solutions that will protect their waterfront properties from erosion. In the past, we have accomplished this through a combination of site visits, written handouts, and similar resources. For years, there has been a need to find a way to visually demonstrate the methods found in the written resources. In 2021, other local agencies partnered to purchase an EM2 Stream Table (EM2) to do just that. The EM2 is able to simulate complex watershed functions, erosion, runoff, and so much more.

This year, the River Center was able to partner with the Kenai Watershed Forum to debut the EM2 to the public, where it was received with overwhelming support. Almost immediately after, the EM2 was booked out through the end of the year, to be used at local events and schools. The EM2's high demand demonstrates a need for a second EM2, one that can be used to provide landowner education at the River Center. The second EM2 would be hosted as a KPB asset at the River Center, and would be available for in-office demonstration, public events, permitting days, etc.

The total cost of the new EM2 comes to \$12,517.00, and represents an equivalent model to the EM2 purchased in 2021. This proposal divides the costs between the Kenai Peninsula Borough (KPB), and the US Fish and Wildlife Service (USFWS). This ordinance would appropriate \$6,000.00 from the General Fund, and \$6,517 would be provided by USFWS via a pass-through agreement with the Kenai Soil and Water Conservation District.

#### FINANCE DEPARTMENT ACCOUNT / FUNDS VERIFIED

Acct. No. 100.27900 Amount: \$6,000  
Acct. No. 100.23TAB.33123 Amount: \$6,517

By: *CJ* Date: 8/10/2022

Your consideration of this ordinance is appreciated.

# Expanding Watershed Education and Outreach via an Em2 Stream Table

Developed by: Samantha Lopez, KPB and Emily Munter, USFWS

Date: August 11, 2022

## Background

Biologists and educators on the Peninsula have long felt the need to be able to visually demonstrate watershed principles and geomorphic concepts in an understandable way to a wide variety of audiences. An excellent tool to demonstrate these concepts is a stream table. After considerable research on different types and designs, the U.S. Fish and Wildlife Service (USFWS) and the Kenai Soil and Water Conservation District (KSWCD) worked with a company called Emriver to purchase an [Em2 stream table](#) in 2021. The name of the table doesn't tell the complete story: this is a highly portable table that is large enough to demonstrate more than just stream dynamics, it can help tell the story of watersheds and the natural and anthropogenic processes that shape them. A few of the many concepts that can be demonstrated include:

- How undersized culverts impact stream function and fish passage
- How vegetation removal impacts streambank stability and accelerates erosion
- How impervious surfaces can increase erosion and facilitate pollution via runoff
- The vulnerability of development within the flood plain or on cut banks
- The impact of rip rap, rock jetties, and other hardened structures on stream hydrology

*"WE HAD SO MUCH FUN WITH THE RIVER TABLE! I LOVE HOW IT IS SO OPEN ENDED AND CUSTOMIZABLE TO DIFFERENT LEVELS AND INTERESTS. THE BEST PART THOUGH IS WATCHING THE KIDS' FACES WHEN THE THINGS THEY LEARN IN THEORY BECOME REAL BEFORE THEIR EYES AND IN THEIR HANDS...SO FUN!"*

-KPBSD ELEMENTARY TEACHER, 2022



Em2 being enjoyed by visitors at the 2022 River Fest. Photo by Kyle Graham/USFWS

The USFWS and KSWCD collaborated with the Kenai Watershed Forum early on to assist in both developing a Kenai-specific curriculum for utilizing the Em2 in the school setting and also to assist in deploying the Em2 in schools and at events. The River Center and the USFWS have also utilized the Em2 at events including an open house at the River Center, the Kenai Peninsula Sports Show, and River Fest.

## Purpose and Need

In just over six months, the Em2 has reached over 200 kids in the school setting, and hundreds of community members and visitors at community events. All accounts point to the Em2 stream table being an incredible resource for our area. Feedback from schools, partners,

landowners, agency personnel, and community members has been overwhelmingly positive. We have even received requests from partners as far away as Palmer to use the table. **We have quickly learned that a second Em2 is needed to meet the high demand – in particular, the demand of landowner education.**

#### *Ideas and Opportunities*

The intent would be for a second Em2 be hosted by the River Center but available for use by partners. In addition to being ready for use in the River Center lobby to demonstrate concepts to landowners and other permit applicants, there are numerous other opportunities to maximize use of a second table. The following is a cursory and unvetted list of ideas and opportunities for a second table:

- Utilize the Em2 at community events beyond the Kenai/Soldotna area, for example Homer, Ninilchik, Cooper Landing, and beyond.
- Utilize the Em2 at the Seward and Kenai permitting days to present landowners and community partners with watershed and streambank health topics and best management practices.
- Develop a series such as “Watershed Wednesdays” at the River Center where the Em2 could be utilized to highlight relevant principles. Guest speakers could be brought in to provide educational talks on topics of interest.
- Develop a session for the Guide Academy, providing guides with knowledge to share with clients to not only enhance client experience but to create a culture of appreciation of the Kenai’s resources.



KWF staff demonstrating stream processes to a community member. Photo by Meg Pike/KWF

*“AFTER ATTENDING THE OPEN HOUSE AT THE RIVER CENTER IN DECEMBER, I UNDERSTAND WHY PILING ROCKS ALONG MY STREAMBANK IS A BAD IDEA FOR THE STREAMBANK AND FOR FISH. I’VE TOLD MY NEIGHBORS THAT TOO.*

*-LOCAL LANDOWNER, 2021*

#### *Projected Costs and Proposed Cost-Sharing*

The quote below from Emriver was issued June 29, 2022 and is valid for 90 days and represents an equivalent model to the Em2 purchased in 2021. We propose to divide the costs equally between the KPB and the USFWS. USFWS dollars would be provided via a pass through agreement with the Kenai Soil and Water Conservation District.

One Complete Standard Emriver Em2 System	\$5,850.00
Upgrade to Color-coded-by-size Modeling Media	\$3,170.00
K500 Digital Flow Controller	\$1,835.00
Structures Kit	\$225.00
Academic Kit	\$310.00
Emriver Battery Adapter	\$115.00
Shipping	\$1,012.00
<b>Total</b>	<b>\$12,517.00</b>



550 N. University Ave.  
Carbondale, IL 62901, USA  
Phone +1-618-529-7423 | Fax +1-618-529-0927  
info@emriver.com | [emriver.com](http://emriver.com)



## Emriver Em2 Geomodel – Price quote and shipping information

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Date June 29, 2022

Quote By Kris Schachel, kris@emriver.com

Quote For Emily Munter  
U.S. Fish & Wildlife Service  
Alaska  
Emily\_Munter@fws.gov  
907-260-0124

---

This quote includes a complete [Em2](#) system and is valid for 90 days. Specifications and included parts are listed on the following page. All prices in US Dollars.

One Complete Standard Emriver Em2 System	\$5,850.00
Upgrade to Color-coded-by-size Modeling Media	\$3,170.00
K500 Digital Flow Controller	\$1,835.00
Structures Kit	\$225.00
Academic Kit	\$310.00
Emriver Battery Adapter	\$115.00
Shipping	\$1,012.00
<b>Total</b>	<b>\$12,517.00</b>

### Optional Accessories

Upgrade to Color-coded-by-size Modeling Media	A	\$3,170.00
K500 Digital Flow Controller	B	\$1,835.00
Wavemaker	C	\$3,695.00
Groundwater System	D	\$3,325.00
Structures Kit	E	\$225.00
Academic Kit	F	\$310.00
Emriver Battery Adapter	G	\$115.00

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These parts are included in your Emriver Em2 system. See the [specifications on our website](#) for further description, including photographs.

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<b>Box</b>	Engineered reinforced 0.08" sheet aluminum box, 33 x 77 x 5 inches (0.83 x 1.96 x 0.13 m), 38 lbs (17.5 kg), TIG welded, PVC standpipe and drain fixture
<b>Supports</b>	Two folding aluminum supports, about 14 lbs (6.3 kg) each
<b>Reservoir</b>	27 gal. (102 L) polypropylene, with supports for sediment filter and pump  Sediment filter
<b>Pump</b>	Sealed 500 gph (1,892 lph) 12-volt 2.0 amp submersible pump, with intake filter
<b>Power supply and pump controller</b>	12-volt power supply with Ground Fault Circuit Interrupter, input standard 115-volt 60 Hz; Emriver simple one-knob electronic pump controller. Export models shipped with appropriate CE-approved power supply and connectors.
<b>Modeling media</b>	150 lbs (68 kg) ground thermoset plastic sand, specially manufactured with proprietary mix of size and color: non-color-coded Alpha mix
<b>Measurement tools</b>	Measuring tape for long profile surveys
<b>Modeling accessories</b>	Quartz riprap stones and colorful plastic riprap rocks  Acrylic shapes for bridge culverts, piers, and other flow obstructions  Simulated riparian vegetation
<b>Sediment handling</b>	Large scoops: one perforated and one non-perforated  Two scrapers for moving and shaping media  Concentrated blue and green dye with injection squeeze bottles for flow visualization
<b>Support</b>	Comprehensive use and maintenance manual  Comprehensive demonstration manual  Full parts, supplies, and model support from Emriver by phone and email.

---



## **Emriver Accessories and Instruments**

### **A Color-coded-by-size Modeling Media**

Emriver's color-coded-by-size modeling media is unique worldwide. It is made of ground thermoset plastic, is ideal for research, and allows for visualization of sediment transport and deposition according to size. An example of average particle sizes:

- Yellow 1.4 mm
- White 1.0 mm
- Black 0.7 mm
- Red 0.4 mm

*Color-coded media purchased upfront with the Em2 is \$3,170. We discount this media when purchased with the Em2 because non-color-coded media that would come with the standard Em2 is removed. If purchased later, the color-coded media is \$4,000 because the standard Em2 purchase will have included non-color-coded media.*

### **B Emriver K500 Digital Flow Controller**

The K500 controller and Paddle Wheel allows for precise flow measurement. It can also:

- Measure cumulative discharge over time
- Execute pre-programmed hydrographs

### **C Wave Maker**

The Wave Maker allows for study of coastal geomorphology processes. It is driven by a microprocessor-based, open source system made for precise control. Users can adjust wave stroke speed, stroke length, pause between strokes, tally run time and wave count. It can simulate a large array of processes, including:

- Longshore drift
- Sediment delivery from river mouths
- Particle sorting by these processes *if used with color-coded modeling media*

### **D Groundwater System**

This system can inject and extract subsurface flow from the model, and newly includes a Rain Maker spray bar component to allow demonstration of precipitation.

## **E Structures Kit**

The Structures Kit helps show the effects of culverts and bridges in streams, including fish passage, flooding, stability and other management issues. It includes:

- Two box culverts
- Walled culvert
- Walled double culvert
- Four model houses

## **F Academic Kit**

The Academic Kit aids research and experimentation in the Emriver model with tools for measurement. It includes:

- Crossbeam level rod, used with a laser level for surveying topography in the model, including long profiles and channel cross sections. Laser level is not included.
- 2000 ml graduated beaker
- 250 ml graduated cylinder
- 1000 ml graduated cylinder
- Stopwatch
- Coarse mesh hand sieve
- Perforated scoop
- Small channel-building scoop

## **G Emriver Battery Adapter**

The Emriver Battery Adapter allows our models to be powered with a 12-volt battery for field use. Battery is not included.

## **Delivery**

Emriver, Inc. is a small organization and our models are custom built upon receipt of order. Please let us know if you have particular delivery requirements, such as class/event/project needs, funding deadlines, or other delivery deadlines. We will make every effort to meet your needs, but **we cannot guarantee delivery dates.**

## **Shipping**

The Emriver Em2 model ships via freight.

## **Payment**

We prefer payment from an invoice within 30 days of billing. You will be billed upon receipt of Purchase Order. Emriver, Inc. does not collect sales tax. Buyer is responsible for paying applicable taxes in their state. If you are tax exempt, please include your tax-exempt certificate with your payment or email it to [info@emriver.com](mailto:info@emriver.com).

## **Warranty**

Emriver will replace parts with manufacturer defects within one year of purchase. After the warranty period, replacement parts may be purchased from Emriver if needed.



110 Trading Bay Suite 160 | Kenai, Alaska 99611 | (907) 283-8732 ext. 5 | [www.kenaisoilandwater.org](http://www.kenaisoilandwater.org)

August 16<sup>th</sup>, 2022

Samantha Lopez  
River Center Manager  
Donald E. Gilman River Center  
514 Funny River Road  
Soldotna, AK 99669

Dear Samantha,

The Kenai Soil and Water Conservation District (KSWCD) and the U.S. Fish and Wildlife Service's Kenai Fish and Wildlife Conservation Office (USFWS) are pleased to partner with the Kenai Peninsula Borough on the purchase of an incredible educational resource, an Em2 stream table, created by Little River Research and Design.

The availability of an Em2 stream table will be valuable not only to the local community, but to the Borough at large. Locally we currently have one Em2 stream table which is primarily used in the school and youth education setting and has been popular and well received by local educators. The stream table has proven so popular that it is scheduled for use well in advance, leaving gaps in availability for other education and outreach needs. In particular, a second table is warranted to meet the needs for adult and streambank landowner education all across the Peninsula and to serve as a back-up table for youth education as well.

The KSWCD and USFWS are committed to sharing the cost of a second Em2 with the Borough. The KSWCD, utilizing pass-through dollars coming from a cooperative agreement with the USFWS, can provide the Borough up to \$7,000 in reimbursement for costs associated with the purchase. The intent is for the KSWCD and the USFWS to jointly split the costs with the Borough by approximately 50%.

Please contact Tiffany Brand, District Manager of KSWCD at (907) 741-7923, or Emily Munter, Habitat Biologist with the USFWS at (907) 395-7818, with any questions.

Sincerely,

Tiffany Brand  
District Manager  
Kenai Soil and Water Conservation District

Introduced by:	Mayor
Date:	08/23/22
Hearing:	09/06/22
Action:	Enacted as Amended
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-19-11**

**AN ORDINANCE APPROPRIATING \$5,317.28 IN SURETY BONDS CLAIMED FROM  
A CONTRACTOR TO FUND INCOMPLETE CULVERT REPAIRS ON TAURUS  
COURT**

**WHEREAS,** in November 2020, road and culvert work on Taurus Court was identified as incomplete and an extension of seven months was granted in order to allow the contracted entity time to complete the required work; and

**WHEREAS,** the work was not completed by June 2021 and after review by the Road Service Area (“RSA”) Board, an additional extension was granted to June 2022, which the contractor also failed to meet; and

**WHEREAS,** due to the contractor’s failure to complete the required work, the surety funds were claimed by the RSA and will be used for completion of the culvert work and associated cost on Taurus Court; and

**WHEREAS,** at its meeting held on August 16, 2022 the RSA recommended approval by unanimous consent;


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

**SECTION 1.** Claimed surety bond funds in the amount of \$5,317.28 are appropriated to account 236.33950.43952 to provide for completion of the culvert work and associated costs on Taurus Court.

**SECTION 2.** That appropriations made in this ordinance are project length in nature and as such do not lapse at the end of any particular fiscal year.

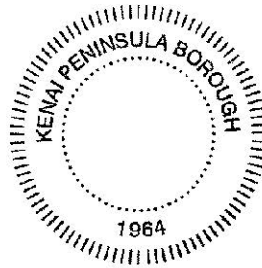
**SECTION 3.** That this ordinance shall be retroactively effective on August 1, 2022.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY OF SEPTEMBER, 2022.**

  
Brent Johnson, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



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


# Kenai Peninsula Borough



## Road Service Area

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### MEMORANDUM

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

**THRU:** Charlie Pierce, Mayor 

**FROM:** Jed Painter, Acting Roads Director   
Brandi Harbaugh, Finance Director 

**DATE:** August 11, 2022

**RE:** Ordinance 2022-19-11, Appropriating \$5,317.28 in Surety Bonds Claimed from a Contractor to Fund Incomplete Culvert Repairs on Taurus Court (Mayor)

---

In November 2020 road and culvert work on Taurus Court was identified as incomplete and an extension of 7 months was granted in order to allow the contracted entity time to complete the required work. Work was not completed by June 2021 and after review by the Road Service Area Board, an additional extension was granted until June 2022. The work was not completed by June 2022, therefore the Borough Road Service Area has claimed the surety bond originally provided in order to fund the incomplete culvert work on Taurus Court.

This ordinance appropriates \$5,317.28 in claimed surety bond funds to complete culvert work on Taurus Court.

Your consideration of the ordinance is appreciated.

**FINANCE DEPARTMENT  
ACCOUNT / FUNDS VERIFIED**

Acct. No. 236.W6TAU.37310 Amount: \$5,317.28

By:  Date: 8/11/2022

Kenai Peninsula Borough  
Office of the Borough Clerk

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**MEMORANDUM**

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

**THRU:** Johni Blankenship, Borough Clerk (JB)

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

**DATE:** August 23, 2022

**RE:** Ordinance 2022-19-11: Appropriating \$5,317.28 in Surety Bonds Claimed from a Contractor to Fund Incomplete Culvert Repairs on Taurus Court (Mayor)

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

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

**"WHEREAS,** at its meeting held on August 16, 2022 the RSA recommended approval by unanimous consent;"

Thank you.



**Turner, Michele**

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**From:** Blankenship, Johni  
**Sent:** Wednesday, August 17, 2022 4:11 PM  
**To:** Turner, Michele  
**Subject:** FW: Memo & Ordinance 2022-19XX  
**Attachments:** LAYDOWN #4 Memo - Ordinance Surety Deposit.pdf

**From:** Agosti, Elaine <eagosti@kpb.us>  
**Sent:** Wednesday, August 17, 2022 12:38 PM  
**To:** Blankenship, Johni <JBlankenship@kpb.us>  
**Subject:** Memo & Ordinance 2022-19XX

Johni,

The RSA had its board meeting on August 16<sup>th</sup>. Ordinance 2022-19XX for claimed Surety Bond funds was reviewed by the board. Board members unanimously agreed Surety Money of \$5,317.28 to be used to install a culvert on Taurus Ave.

If you have any questions, please feel free to contact me.

Thank you Johni

Elaine Agosti  
Administrative Assistant  
KPB Road Service Area  
907-262-4427  
[roads@kpb.us](mailto:roads@kpb.us)

Introduced by:	Mayor
Date:	08/23/22
Hearing:	09/06/22
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-19-12**

**AN ORDINANCE ACCEPTING AND APPROPRIATING THE COMMERCIAL  
PASSENGER VESSEL TAX PROCEEDS RECEIVED FROM THE STATE OF ALASKA  
UNDER THE FEDERAL PASS-THROUGH PROGRAM, AMERICAN RESCUE PLAN  
ACT OF 2021 IN THE AMOUNT OF \$612,640 AND ALLOCATING \$577,195 TO THE  
CITY OF SEWARD AND \$35,445 TO THE CITY OF HOMER**

**WHEREAS,** House Bill 69, which appropriated funding to the Commercial Passenger Vessel (“CPV”) Excise Tax shared tax program, was passed by the State Legislature and signed by the Governor on July 7, 2021; and

**WHEREAS,** House Bill 69 appropriated funds from the American Rescue Plan Act (“ARPA”) of 2021 to supplement the same amount that was shared to eligible ports of call for calendar year 2021, and the disbursements will be equal to the disbursements in calendar year 2020; and

**WHEREAS,** the total amount received by the Borough from the State of Alaska for the 2020 calendar year CPV is \$612,640.00; and

**WHEREAS,** the City of Seward and the City of Homer are eligible ports of call that can request their share of the funds to be received for improvement projects eligible under the U.S. Treasury ARPA Interim Guidance; and

**WHEREAS,** the funds used by the cities of Seward and Homer must comply with ARPA requirements using final treasury and federal guidance;


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

**SECTION 1.** The amount of \$612,640.00 received from the State of Alaska for the commercial passenger vessel excise tax collection program be appropriated from the miscellaneous grant fund balance to account 271.94910.22CPV.43011, contract services, for payment to the City of Seward in the Amount of \$577,195 and to the City of Homer in the amount of \$35,445 to be used for projects eligible under the under the U.S. Treasury American Rescue Plan Act of 2021 Final Guidance.

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

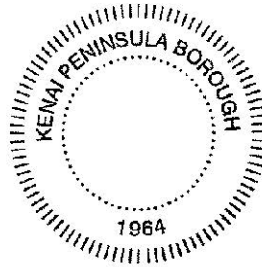
**SECTION 3.** That this ordinance is retroactively effective on July 1, 2022.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY OF SEPTEMBER, 2022.**

  
Brent Johnson, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



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



# Kenai Peninsula Borough


## Community & Fiscal Projects

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### MEMORANDUM

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

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

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

**DATE:** August 11, 2022

**RE:** Ordinance 2022-19-12, Accepting and Appropriating the Commercial Passenger Vessel Tax Proceeds Received from the State of Alaska Under the Federal Pass-Through Program, American Rescue Plan Act of 2021 in the Amount of \$612,640 and Allocating \$577,195 to the City of Seward and \$35,445 to the City of Homer (Mayor)

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The State of Alaska Commercial Passenger Vessel Tax Program ("CPV"), originally enacted in 2006, provides for the levy and collection of this tax and the disposition of the proceeds. The taxes are deposited into a State of Alaska fund called the CPV tax account. A portion of the proceeds are disbursed to the first seven ports of call each year. If ports of call are located in a city within a borough, \$2.50 per passenger is distributed to the city and the borough in which the city is located. Both the City of Seward and the City of Homer have qualified for these calendar year 2021 funds. Historically, the Borough has elected to pass the funds distributed to the Borough through to the cities in which the ports are located.

This year, the State of Alaska's operating budget funded the CPV budget with American Rescue Plan Act funds (ARPA). The U.S. Treasury Final Guidance restricts the use of these funds to each city for specific purposes. The cities may use these projects for eligible pay-go critical infrastructure projects based on specific criteria found within the final guidance. Therefore, the cities' projects must be approved and be allowable under the U.S. Treasury Final Guidance.

Each city will be provided a request letter describing in detail their planned usage for eligible projects, and information sufficient to confirm the eligibility relating to revenue replacement fund usage.

Page -2-  
August 11, 2022  
Re: O2022-19-12

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Subrecipient grant agreements will be executed on a reimbursement basis, where quarterly grant reports will be required. The Community & Fiscal Projects Manager shall oversee the program. Funding amounts are determined by the State of Alaska for each port of call.

Attachments: City of Homer Request Letter, City of Seward Request Letter

Your consideration of the ordinance is appreciated.

FINANCE DEPARTMENT FUNDS/ACCOUNT VERIFIED	
Acct. No:	<u>271.94910.22CPV.49999</u>
Amount:	<u>\$612,640</u>
By	<u>CJ</u> Date: <u>8/11/2022</u>



- Main Office (907) 224-4050
- Police (907) 224-3338
- Harbor (907) 224-3138
- Fire (907) 224-3445
- City Clerk (907) 224-4046
- Community Development (907) 224-4049
- Utilities (907) 224-4050
- Fax (907) 224-4038

May 11, 2022

Mayor Charlie Pierce  
Kenai Peninsula Borough  
144 North Binkley Street  
Soldotna, AK 9669

Dear Mayor Pierce:

First, I want to thank you for your efforts to secure federal funding projects on the Kenai Peninsula. As requested from Rachel Chaffee in April 20 email, this letter is to formally request on behalf of the City of Seward the \$577,195 that has been set aside for the city as part of the America Rescue Plan Act (ARPA).

The City of Seward has identified the need for investment in water and sewer infrastructure as the most appropriate use of these funds as well as expansion opportunities.

Thank you again for the work you and your team do on behalf of the Kenai Peninsula and the cities and towns located here. Please do not hesitate to contact me if you have questions or need more information regarding this important project.

Sincerely,

Jarrette Bower, City Manager  
City of Seward  
[jbower@cityofseward.net](mailto:jbower@cityofseward.net)  
(907) 224-4012

Cc: Rachel Chaffee, Community & Fiscal Project Manager



## City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Office of the City Manager

491 East Pioneer Avenue  
Homer, Alaska 99603

[citymanager@cityofhomer-ak.gov](mailto:citymanager@cityofhomer-ak.gov)

(p) 907-235-8121 x2222

(f) 907-235-3148

May 17, 2022

Mayor Charlie Pierce  
Kenai Peninsula Borough  
144 N. Binkley St.  
Soldotna, AK 99669  
*Delivered electronically*

SUBJECT: 2022 Cruise Passenger Tax Receipts

Dear Mayor Pierce:

I am writing to confirm that the City of Homer wishes to receive the 2022 Commercial Passenger Vessel Tax receipts from the Borough. It is our understanding that you will be sponsoring an Ordinance that would make the Borough's share of these tax receipts for vessel landings in Homer available to the City. The City appreciates that and understands that the amount to be passed through for 2022 is \$35,445 from the America Rescue Plan Act (ARPA).

As a federal pass-through source, the eligible use of the funds must adhere to the ARPA guidance. As such, the City will defer applying the funds to reimburse the Port & Harbor Enterprise for the construction of Ramp 2 restroom for another year. The total remaining on this State and Borough previously approved CPVT use is \$57,521.17.

The City plans to accept the CY22 CPVT ARPA pass through as revenue replacement and utilize it, along with \$35,445 in CPVT funds from the State of Alaska, to support City of Homer's Port & Harbor crane dock services through a pay-go project: refurbishing Crane 7. We have included project details with this request.

Thank you in advance for your time and consideration. Pass through CPVT funds from the Borough and the State will supplement funds from the Port & Harbor Reserves to makes this project feasible. Please do not hesitate to contact me if you have any questions.

Sincerely,

Rob Dumouchel  
City Manager

Cc: Rachel Chaffee, KPB Community and Fiscal Projects Manager

**Homer Crane Dock: Refurbish Crane #7** - Project Manager: Bryan Hawkins, Harbormaster  
bhawkins@ci.homer.ak.us

This project completes a necessary overhaul of one of the seven cranes located on Homer Port & Harbor's Fish Dock. The public use cranes are owned and maintained by the City of Homer Port & Harbor and are heavily used by commercial fishing vessels. The crane identified for this funding is 35 years old and needs an overhaul to remain in service.

**Budget**

Item	Narrative	Amount
Contracted Labor and Materials	<p>Remove crane #7 and perform complete teardown:</p> <ul style="list-style-type: none"> <li>• sand blast and paint all parts,</li> <li>• line bore and install new bushings and pins,</li> <li>• rebuild and reseal all cylinders,</li> <li>• clean and modify hydraulic tank,</li> <li>• install new winch, wire rope, and headache ball,</li> <li>• repair electric motor as needed,</li> <li>• install new hydraulic valve with hydraulic pilot controls,</li> <li>• convert all adaptors to stainless steel,</li> <li>• fabricate all new hoses,</li> <li>• fabricate new diamond plate valve stand and tubing cover,</li> <li>• install stainless steel tubing from pilot controls to valve</li> <li>• install new wear pads,</li> <li>• Install new pressure and return filters and suction strainers</li> <li>• apply all new warning decals and signage,</li> <li>• fill crane with new hydraulic fluid,</li> <li>• assemble with all new mounting hardware.</li> </ul> <p>Function test crane after assembly.</p>	\$ 139,400.00
Travel (drive) time to Homer to remove Crane and then return to install it	6 hours @ \$100/hour	\$ 600.00
<b>Total Project Cost</b>		<b>\$ 140,000.00</b>

Project Start Date: Summer 2022 (after Borough grant agreement is received and Homer City Council approval of agreement via Ordinance)

Project Completion Date: Spring 2023



Introduced by:	Mayor
Date:	08/23/22
Hearing:	09/06/22
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-19-13**

**AN ORDINANCE ACCEPTING AND APPROPRIATING CONGRESSIONALLY  
DIRECTED SPENDING GRANT FUNDS FROM THE ENVIRONMENTAL  
PROTECTION AGENCY, APPROPRIATING THE REQUIRED TWENTY PERCENT  
MATCH FUNDS FROM THE GENERAL FUND, AND RE-ALLOCATING STATE AND  
LOCAL FISCAL RECOVERY FUNDS FROM THE SOLID WASTE DEPARTMENT TO  
SCHOOL PAY-GO AND CYBERSECURITY PROJECTS**

**WHEREAS,** the United States Congress passed the federal budget with congressionally directed spending which allocated \$3,360,000; and

**WHEREAS,** on April 18, 2022 the Kenai Peninsula Borough (“Borough”) received notification that the request for congressionally directed spending for the Leachate Project was funded from the Environmental Protection Agency at the Central Peninsula Landfill; and

**WHEREAS,** the funds are issued as a grant and require a 20 percent match of \$840,000 in local funds which were not previously budgeted for in the Borough’s Fiscal Year 2023 (FY23) budget; and

**WHEREAS,** the funds have been verified and are available within the General Fund; and

**WHEREAS,** the Leachate Project previously had State and Local Fiscal Recovery Funds allocated to it that cannot be used as match funds, and an amount equal to the match requirement will need to be re-allocated to other projects; and

**WHEREAS,** previously appropriated American Rescue Plan Act (“ARPA”) grant funds equal to the match requirement of \$840,000 will be re-allocated to other eligible projects; and

**WHEREAS,** \$225,000 in ARPA funds are being redirected for cybersecurity upgrades boroughwide; and

**WHEREAS,** \$615,000 in ARPA funds are being redirected for school-based projects for negatively impacted communities, or school-based pay-go projects for school maintenance projects that meet all criteria allowable under the U.S. Department of Treasury's Final Rule for ARPA State and Local Fiscal Recovery Funds Program; and

**WHEREAS,** future distribution to specific school-based project(s) for negatively impacted communities or school-based projects or school-based pay-go projects for school maintenance must be first approved by assembly resolution prior to any use of the appropriated funds;

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

**SECTION 1.** That the mayor is hereby authorized to execute grant agreements and any other documents deemed necessary to expend the funds and to fulfill the intents and purposes of this ordinance.

**SECTION 2.** That the amount of \$3,360,000 received from the Environmental Protection Agency for the Central Peninsula Landfill Leachate Project as congressionally directed is appropriated to account 411.32122.LEACH.49999 for the Central Peninsula Landfill Leachate Project and related expenditures.

**SECTION 3.** That the amount of \$840,000 is appropriated from the General Fund fund balance to be transferred to account 411.32122.LEACH.49999 to provide match funds for the Central Peninsula Landfill Leachate Project.

**SECTION 4.** That \$225,000 in previously appropriated American Rescue Plan Act grant funds are redirected to account 271.11231.SLF06.49999 for boroughwide cybersecurity improvements.

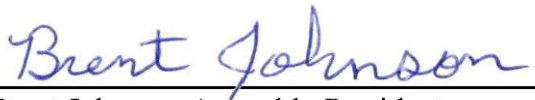
**SECTION 5.** That \$615,000 in previously appropriated American Rescue Plan Act grant funds are redirected to account 400.78050.SLF07.49999 for school-based projects for negatively impacted communities or school-based projects or school-based pay-go projects for school maintenance. Funds appropriated to this account for school-based projects may only be distributed and spent upon assembly approval, by resolution, of a specific project or list of projects.

**SECTION 6.** That appropriations made in this ordinance are project length in nature and as such do not lapse at the end of any particular fiscal year.

**SECTION 7.** That Section 1, 2, 3 and 6 of this ordinance shall be effective retroactively to July 1, 2022.

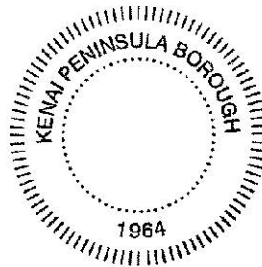
**SECTION 8.** That Sections 4 and 5 of this ordinance shall be effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY OF SEPTEMBER, 2022.**

  
Brent Johnson, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



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

No: None

Absent: None

# Kenai Peninsula Borough

## Solid Waste Department

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### MEMORANDUM

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

**THRU:** Charlie Pierce, Mayor *CP*  
Brandi Harbaugh, Finance Director *BH*  
Rachel Chaffee, Community & Fiscal Projects Manager *RC*  
John Hedges, Purchasing & Contracting Director *JH*

**FROM:** Lee Frey, Solid Waste Director *LF*

**DATE:** September 6, 2022

**RE:** LAYDOWN Ordinance 2022-19-13: Leachate Infrastructure Improvements Budget

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The Solid Waste Department has been proceeding with several infrastructure improvements at the Central Peninsula Landfill (CPL) to manage the ongoing leachate inventory issue. The following is a narrative of the budget and scope changes that have occurred through the beginning of the project with ARPA funding to receiving the EPA grant funding and altering the scope to better address the leachate issues.

The project began with an initial budget of \$6,000,000 in ARPA funding. The original scope of the project due to limited funding was to increase the leachate storage capacity and winter operations capacity by constructing a new leachate lagoon and tank as well as relining the existing leachate lagoon. Storage of leachate is a major issue currently as we can only pump the cells until the existing pond is full. A new evaporator to increase capacity would not have fit within the budget, so we were working with the manufacturer to make upgrades to the existing evaporator to improve operations and reduce maintenance downtime.

We were awarded an EPA grant for our leachate infrastructure in the amount of \$3,360,000. KPB is required to provide a 20% match of \$840,000 to accept the grant. The ARPA funds already established for the project are unable to be used as matching funds, therefore \$840,000 from the General Fund is being appropriated to match the EPA grant. We proposed releasing \$840,000 of the ARPA funds to be used for other projects to offset our need to appropriate \$840,000 for the match. This increased the project budget to \$9,360,000. With the

Page -2-  
 September 6, 2022  
 Re: O2022-19-13

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increased budget, we revised the scope of the project to include a new evaporator to raise the evaporation capacity from 12,000 gallons per day to 30,000 gallons per day and allow us to increase storage and disposal capacity.

The following schedule is a list of the actual and budgeted expenses to complete the project. A contingency is also included as construction costs remain extremely volatile.

Item	Cost	Status
Floating Evaporator	\$ 59,332.37	Actual
Leachate Infrastructure Design	342,655.00	Actual
Evaporation Equipment	2,999,000.00	Actual
Evaporator Shipping	50,000.00	Budgeted
Evaporator Design	100,000.00	Budgeted
Evaporator Install	700,000.00	Budgeted
Pond Materials	379,975.00	Actual
Pond Construction	2,379,190.00	Actual
Tank Construction	1,700,000.00	Budgeted
Project Management	100,000.00	Budgeted
<b>Subtotal</b>	<b>\$ 8,810,152.37</b>	
1% Admin fee	88,101.52	Actual
5% Contingency	440,507.62	Budgeted
<b>Grand Total</b>	<b>\$ 9,338,761.51</b>	

We are currently in the construction phase for construction of the new leachate lagoon, relining the existing lagoon, and relocation of a storm water pond that needed moved for the new lagoon. Design is ongoing for the construction of the new tank, pump house to control the new infrastructure, and evaporator replacement. We expect to have this project out for bid before the end of the year for construction in 2023. This will solidify the remaining major costs for the project. After award, we could reallocate the remaining unused ARPA funds for use in other KPB projects. These funds need to be spent by the end of 2024.

Please let me know if you have any questions.

# Kenai Peninsula Borough

## Community & Fiscal Projects

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### MEMORANDUM

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

**THRU:** Charlie Pierce, Mayor *CP*  
Brandi Harbaugh, Finance Director *BH*  
John Hedges, Purchasing & Contracting Director *JH*

**FROM:** Rachel Chaffee, Community & Fiscal Projects Manager *RC*  
Lee Frey, Solid Waste Director *LF*  
Ben Hanson, Information Technology Director *BH*

**DATE:** August 11, 2022

**RE:** Ordinance 2022-19-13, Accepting and Appropriating Congressionally Directed Spending Grant Funds from the Environmental Protection Agency, Appropriating the Required Twenty Percent Match Funds from the General Fund, and Re-Allocating State and Local Fiscal Recovery Funds from the Solid Waste Department to School Pay-Go and Cybersecurity Projects (Mayor)

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On April 18, 2022, the Kenai Peninsula Borough received notification that the request for congressionally directed spending for the Leachate Project was funded from the Environmental Protection Agency. In July of 2022, the Environmental Protection Agency began finalizing their granting process and issued final notifications and began the processes of notifying the agencies of the funding, and grant processes.

The funding amount requested and awarded for the Leachate project is \$3,360,00.00 and has a 20% match requirement which requires an additional \$840,000.00 in non-federal, local funds. The match funds are not budgeted for in FY23.

The Leachate Project previously had State and Local Fiscal Recovery Funds allocated to it that cannot be used as match funds. An amount equal to the match requirement will need to be re-allocated to other projects. The suggested projects are:

- \$225,000.00 for cybersecurity activities to be managed through the Information Technology Department meeting all criteria allowable under the Final Rule for State and Local Fiscal Recovery Fund requirements, and ensuring the Kenai Peninsula Borough is protected from cybersecurity threats boroughwide, and;

Page -2-  
 August 11, 2022  
 Ordinance 2022-19-13

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- \$615,000.00 for school-based projects for negatively impacted communities or school-based pay-go projects for school maintenance projects that meet all criteria allowable under the Final Guidance for State and Local Fiscal Recover Fund requirements. Prior to further distribution and spending of these funds, each project or projects will be approved by Assembly resolution.

The total of both amounts as listed above are \$840,000.00

It is therefore requested that the assembly:

- Accept and appropriate \$3,360,000 in congressionally directed grant funds from the Environmental Protection Agency for the Leachate Project, and;
- Appropriate, from the general fund, \$840,000 for the 20% match requirement for the Environmental Protection Agency, and;
- Redirect \$225,000 of State and Local Fiscal Recovery Funds from Solid Waste for cybersecurity protection, and;
- Redirect \$615,000 of State and Local Fiscal Recover Funds from Solid Waste for school-based projects for negatively impacted communities or school-based pay-go projects for school maintenance.

Your consideration of the ordinance is appreciated.

**FINANCE DEPARTMENT  
 FUNDS/ACCOUNT VERIFIED**

**Account:** 411.32122.SLF02.49999

**Amount:** \$840,000

**Account:** 100.27910

**Amount:** \$840,000

**Account:** 411.LEACH.33131

**Amount:** \$3,360,000

By:  Date: 8/11/2022

## Summary of Project and Funding Sources for Ordinance 2022-19-13

	<b>FUND:</b>	ARRA	General Fund	EPA	<b>Project Total</b>
<b>PROJECT:</b>					
Landfill Leachate		(\$840,000)	\$840,000	\$3,360,000	\$3,360,000
Cybersecurity		\$225,000			\$225,000
School Pay-Go Maintenance		\$615,000			\$615,000
<b>Fund Total</b>		\$0	\$840,000	\$3,360,000	



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**From:** Chaffee, Rachel  
**Sent:** Tuesday, August 23, 2022 5:56 PM  
**To:** Blankenship, Johni  
**Cc:** Turner, Michele; Rhoades, Aaron; Pierce, Charlie  
**Subject:** Ordinance 2022-19-13

Good Evening Assembly Members,

The below table is a different way to present how the funds will be utilized in the ordinance. I hope this helps.

Description	Waste Department	School-Pay Go	IT Department	Fund Type
EPA Grant Funds Received	\$3,360,000			Federal
General Fund Match	\$840,000			New-Appropriation General Fund
ARPA Funds-Cybersecurity			\$225,000	Federal-ARPA-Reallocation
ARPA Funds-School Pay-go		\$615,000		Federal-ARPA-Reallocation
ARPA Fund-Reallocation	-\$840,000			Federal-ARPA-Reallocation-Removal from Waste Department

Kind regards,

**Rachel Chaffee**  
**Community and Fiscal Projects Manager**  
[rchaffee@kpb.us](mailto:rchaffee@kpb.us)  
**907-714-2153 desk**  
**907-690-1068 Cell**

**KENAI PENINSULA BOROUGH**  
**144 North Binkley Street**  
**Soldotna, Alaska 99669**



Introduced by:	Mayor
Date:	08/23/22
Hearing:	09/06/22
Action:	Failed as Amended
Vote:	0 Yes, 9 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-19-14**

**AN ORDINANCE APPROPRIATING \$225,000 FROM THE LAND TRUST FUND FOR  
SLOPE AND DRAINAGE REPAIRS IN COOPER LANDING AND AUTHORIZING  
THE DISPOSAL OF UP TO 1.25-ACRES OF LAND TO BUNKHOUSE PROPERTIES,  
LLC**

- WHEREAS,** the Kenai Peninsula Borough ("KPB") owns a parcel of land in Cooper Landing that was previously used for material extraction, with the slope reclaimed and a drainage system installed in cooperation with an adjacent property owner; and
- WHEREAS,** in November 2021, the KPB Land Management Division was alerted to an erosion event that involved the slope and adjacent property owned by Bunkhouse Properties, LLC ("Bunkhouse"); and
- WHEREAS,** Resolution 2022-029 approved the Drainage Installation and Work Agreement ("Agreement") with Bunkhouse; and
- WHEREAS,** pursuant to the Agreement, KPB obtained an engineering design to repair the slope and drainage system; and
- WHEREAS,** the estimated cost of the work is \$200,000 to be bid and administered by the KPB Purchasing and Contracting Department; and
- WHEREAS,** in order to mitigate the impacts of potential winter weather conditions, the KPB Administration will waive formal bidding procedures pursuant to KPB 5.28.300; and
- WHEREAS,** as contemplated in the Agreement, the unification of ownership and responsibility for the slope and drainage system is a desired outcome to provide for long-term resolution of management concerns and to resolve associated land use conflicts; and
- WHEREAS,** pursuant to the Agreement, this ordinance proposes for KPB to survey and convey title of the slope area to Bunkhouse for a release of all liabilities associated with the maintenance of the slope and drainage system; and

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

**SECTION 1.** That \$225,000 is appropriated from the Land Trust Fund fund balance to project Account No. 250.21210.SLODR.49999 for slope and drainage repair work, surveying, and project management.

**SECTION 2.** That pursuant to KPB 17.10.100(I), to resolve a land use conflict, the mayor is authorized to survey and convey the slope area, not to exceed 1.25 acres from Tract A, ASLS 2003-2, to the adjacent owner, Bunkhouse, consistent with the Agreement approved by Resolution 2022-029.

**SECTION 3.** That in exchange for the land to be conveyed, all ownership and maintenance responsibilities of the slope and drainage system will be transferred to Bunkhouse and KPB shall be released from all liability as a material term of the purchase agreement. Bunkhouse shall have 90 days from recordation of a survey plat to accept the offer.

**SECTION 4.** That an exception is made to KPB 17.10.100(I), limiting negotiated sales for resolving a land use conflict to not more than one acre, based on the following pursuant to KPB 17.10.230:

- 1) That special circumstances or conditions exist:
  - a. That the area of concern defined by the existing reclaimed slope and reasonable access thereto accounts for approximately 1.25 acres, and limiting the area to less than the entire slope area would not serve the purpose of the conveyance.
- 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. That the purpose of this negotiated sale is to unify controlling property interests of the entire slope and drainage system, such that existing and future land use conflicts between the reclaimed slope and adjacent private land uses can be managed by a single interest holder; and,
  - b. That KPB does not have a public interest in continuing to manage the slope or drainage features beyond the scope of this proposal.

- 3) That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area:
- c. That KPB lacks direct access to the subject slope and drainage features, however Bunkhouse holds the most practical access and is the primary other party to the existing slope and drainage system. Unifying interests to the slope and drainage system would enable the interested party to respond to future events and maintenance needs associated with the slope and drainage functions, thereby protecting property.

**SECTION 5.** That the Mayor is authorized to execute any and all documents necessary to effect this ordinance.

**SECTION 6.** That the appropriations made in this ordinance are project length in nature and as such do not lapse at the end of any particular fiscal year.

**SECTION 7.** That this ordinance shall be effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY OF SEPTEMBER, 2022.**

\_\_\_\_\_  
Brent Johnson, Assembly President

ATTEST:

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

Yes: None

No: Bjorkman, Chesley, Cox, Derkevorkian, Ecklund, Elam, Hibbert, Tupper, Johnson

Absent: None

# Kenai Peninsula Borough

## Planning Department – Land Management Division

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### MEMORANDUM

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

**THRU:** Charlie Pierce, Mayor *CP*  
Robert Ruffner, Planning Director *RR*  
Brandi Harbaugh, Finance Director *BH*  
John Hedges, Purchasing & Contracting Director *JH*

**FROM:** Marcus A. Mueller, Land Management Officer *mam*

**DATE:** August 23, 2022

**RE:** LAYDOWN Ordinance 2022-19 -14, Appropriating \$225,000 from the Land Trust Fund for Slope and Drainage Repairs in Cooper Landing and Authorizing the Disposal of Up to 1.25-Acres of Land to Bunkhouse Properties, LLC (Mayor)

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The Kenai Peninsula Borough (KPB) owns land upslope of Bunkhouse Properties, LLC (Bunkhouse) in Cooper Landing. Along the property line on KPB land is a 2:1 slope and along the property line on Bunkhouse's land is a drainage system that conducts drainage for that area. An erosion event in November 2021 resulted in a slope failure and impacts to the drainage system.

Pursuant to Resolution 2022-029, KPB entered into a drainage and work agreement with the adjacent owner, which set out for engineering, repair work, and a proposal to convey the slope area to Bunkhouse properties. The engineering work has been completed and the initial estimate for the repair work is \$200,000. The work is to be bid and administered by the KPB Purchasing and Contracting Department, under easements and access permission from Bunkhouse Properties.

Because the slope and drainage system maintenance is complicated by KPB not having direct access to the area or sufficient room to manage the features, and because of potential impacts to the adjacent property, which could undergo more development in the future, it is believed to be in the best interest of the KPB is to convey the slope area to the adjacent property owner to unify the management of the system and remove KPB from any future liabilities associated with soil and water movements.

Page -2-  
August 23, 2022  
RE: Ordinance 2022-19-14

---

The attached ordinance would appropriate \$225,000 from the Land Trust Fund, fund balance, to a project account for slope and drainage repair work, surveying, and project management costs.

Due to the late season release and the potential for adverse winter weather conditions, it is the intent of the administration to wave formal bidding procedures per section 5.28.300 of the purchasing code for the solicitation of this ITB.

The ordinance would additionally authorize the mayor to convey up to 1.25 acres covering the slope to Bunkhouse Properties as a negotiated sale in exchange for acceptance of further maintenance responsibilities and a release of all associated liabilities. An exception to the 1-acre limitation for negotiated sales to resolve a land use conflict is requested through this ordinance to account for the entire slope area involved.

Your consideration of the ordinance is appreciated.

**FINANCE DEPARTMENT  
ACCOUNT / FUNDS VERIFIED**

Acct. No. 250.27910 Amount: \$225,000

By:  Date: 8/18/2022

## **DRAINAGE INSTALLATION AND WORK AGREEMENT AND RELEASE OF LIABILITY**

### **SECTION 1. PARTIES**

This Drainage Installation and Work Agreement and Release of Liability (“Agreement”) is between the Kenai Peninsula Borough (“KPB”), an Alaska municipal corporation, whose address of record is 144 N. Binkley St., Soldotna, AK 99669, and Bunkhouse Properties, LLC, by and through its manager-member Bruce Neeno (“Bunkhouse Properties”) whose mailing address is PO Box 90737, Anchorage, AK 99509, is made this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

### **SECTION 2. PROPERTY/PROJECT**

For the purposes of this Agreement:

PROPERTY means: That portion of U.S. Survey 2522-HS 35 lying north of the Sterling Highway, Section 27, T5N, R3W, S.M., Alaska

PROJECT means: Installation of temporary drainage measures to divert water and sediment away from structures with flow temporarily directed to the east away from rental uses, engineering reinspection to prescribe repair and maintenance actions of slope and drainage system, and repair and maintain slope and drainage system, with drainage extension as needed, reseeding disturbed soils, all conduct surveying of project features, subject to KPB Assembly approval and budget, if required. Project includes a monitoring period such that the Project will be deemed complete if all drainage features are properly functioning and all work areas and slopes are stable and vegetation established to June 30, 2023. Proper functioning of drainage features includes a measurable outcome indicating drain capacity and efficacy such that groundwater level downslope of drain collection features is lower than drain elevation observable by test holes. Project shall avoid disturbance of renter trailers and vehicles. Project shall be conducted in a neat, workmanlike manner, grading and stabilizing all work areas and adjacent slopes.

### **SECTION 3. APPLICABLE AUTHORITY**

The undersigned KPB representative has the necessary authority to execute this Agreement.

Bunkhouse Properties is entering into this Agreement of its own free will, with full knowledge of the proposed project and access to legal and engineering counsel. The undersigned manager-member of Bunkhouse Properties represents that he has full authority to bind the entity and execute this Agreement on behalf of Bunkhouse Properties.

### **SECTION 4. AGREEMENT**

KPB agrees to:

KPB/Bunkhouse Properties, LLC Agreement and Release  
Page 1 of 5

1. Contract for work to complete the Project.
2. Manage and fund the Project, subject to KPB Assembly approval and budget, if required.
3. Submit to the KPB Assembly for its consideration, a proposal to transfer the Project slope area to Bunkhouse Properties thereby transferring any and all ownership, control, and maintenance responsibilities of the slope and drainage features to Bunkhouse Properties and its successors in interest, surveyed and platted by KPB. Subject areas are shown on Exhibit A. Proposal is subject to Assembly approval by ordinance.

BUNKHOUSE PROPERTIES agrees to:

1. Grant KPB and KPB's contractors the right, permission, and authority, for the duration of the Project, to enter upon Property, stage equipment and materials, and perform work necessary to complete the Project. Project is to be completed by August 31, 2022.
2. Keep Property in a condition that does not inhibit KPB's ability to complete the Project or perform any activities which will jeopardize the stability of the Project.
3. Allow storage of material on site for the duration of the Project.
4. Accept completion of the Project as specified as just compensation for its role and contribution to the Project.
5. Grant KPB a drainage and work access easement as set forth in the *Drainage and Work Access Easement*, in the location of the Project and drainage system, attached and incorporated into this Agreement by reference.

SECTION 5. RELEASE AND COVENANT NOT TO SUE.

Bunkhouse Properties agrees to the following:

1. Bunkhouse Properties hereby voluntarily and specifically, without any coercion whatsoever, assumes all risk of injury or harm as well as releases and forever discharges KPB and its employees, volunteers, counsel, elected and appointed directors, officers, and agents of any and all liability, claims, and demands of whatever kind or nature, either in law or in equity, which may arise or may hereafter arise from KPB's performance of the Project.
2. Bunkhouse Properties hereby releases, waives, discharges, and covenants not to sue KPB and its employees, volunteers, counsel, elected and appointed directors, officers, and agents from any and all liability, claims, demands, actions, and causes of actions whatsoever arising out of or related to any past loss, damage, acts of God, natural occurrences, or injury, including death arising from the Incident.
3. INCIDENT means: The slope instability on, over, under, and along Tract A, ASLS 2003-2, SW2005-10, within Sec 27, T5N, R3W, Seward Meridian, described in the December 17, 2021 Slope Instability Investigation in Cooper Landing report by Wince-Corthell-Bryson Consulting Engineers and associated progression of events or effects.
4. Bunkhouse Properties hereby releases, waives, discharges, and covenants not to sue KPB and its employees, volunteers, counsel, elected and appointed directors, officers, and agents from any and all liability, claims, demands, actions, and causes of actions



whatsoever arising out of or related to any loss, damage, or injury, including death that may be sustained by Bunkhouse Properties or to any property belonging to Bunkhouse Properties due to construction defects, fire, pollution, or any other possibility stemming from KPB's performance of the Project.

5. It is Bunkhouse Properties' expressed intent that this Agreement shall bind the members of its family, heirs, assigns, next of kin, legal representatives, and/or executors.

#### SECTION 6. NO FAULT

By entering into this Agreement, KPB does not admit fault nor assume any fault for any damages that occurred or is occurring due to movement of earthen materials and/or water on, over, under, or through the Project area.

#### SECTION 7. INTERPRETATION.

Bunkhouse Properties expressly agrees that this Agreement is intended to be as broad and inclusive as permitted by laws of the State of Alaska, and that this Agreement shall be governed by and interpreted in accordance with the laws of the State of Alaska. The parties agree that the release was mutually written by the parties and is to be interpreted according to its fair intent. Any lawsuit brought arising from this agreement shall be filed in the courts of the Third Judicial District, State of Alaska, located in the City of Kenai, Alaska.

#### SECTION 8. MODIFICATIONS

This Agreement may be modified only by written agreement signed by both parties.

#### SECTION 9. SEVERABILITY

Any clause or provision of this Agreement deemed invalid by any court of competent jurisdiction or otherwise by law shall not affect the validity of the remaining provisions of this Agreement which shall continue to be enforceable.

#### SECTION 10. SAVINGS CLAUSE

If any term of this Agreement is found to be void or invalid, such invalidity will not affect the remaining terms of this Agreement, which will continue in full force and effect.

#### SECTION 11. COUNTERPARTS

This Agreement may be executed in counterparts each of which when so executed shall constitute an original and all of which together shall constitute one and the same instrument.

#### SECTION 12. ENTIRE AGREEMENT

This Agreement and exhibits, appendices or incorporated attachments hereto, constitute the entire agreement and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

BUNKHOUSE PROPERTIES LLC

KENAI PENINSULA BOROUGH

\_\_\_\_\_  
By: Bruce Neeno  
Its: Manager-Member  
Dated: \_\_\_\_\_

\_\_\_\_\_  
By: Charlie Pierce  
Its: Mayor  
Dated: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

\_\_\_\_\_  
Johni Blankenship  
Borough Clerk

\_\_\_\_\_  
A. Walker Steinhage  
Deputy Borough Attorney

## BUNKHOUSE PROPERTIES LLC ACKNOWLEDGEMENT

STATE OF ALASKA )  
 ) ss  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by Bruce Neeno, Bunkhouse Properties, LLC, for and on behalf of the Limited Liability Corporation.

Notary Public for the State of Alaska  
My commission expires: \_\_\_\_\_

## KENAI PENINSULA BOROUGH ACKNOWLEDGEMENT

STATE OF ALASKA )  
 ) ss  
THIRD JUDICIAL DISTRICT )

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

Notary Public for the State of Alaska  
My commission expires: \_\_\_\_\_



EXHIBIT A  
PROPOSED LAND TRANSFER FROM KPB TO BUNKHOUSE PROPERTIES  
PROPOSED SURVEY DESIGN



0 100 200 400 Feet



Prepared By: MAM 4/11/22  
File: R/LM/SurveyPlans2022



Introduced by:	Mayor
Date:	05/03/22
Action:	Adopted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2022-029**

**A RESOLUTION APPROVING A DRAINAGE INSTALLATION AND WORK  
AGREEMENT WITH BUNKHOUSE PROPERTIES, LLC IN COOPER LANDING**

**WHEREAS,** the Kenai Peninsula Borough (“Borough”) owns a parcel of land in Cooper Landing with access issues and a 2:1 slope with drainage features that run along and across private land owned by Bunkhouse Properties, LLC; and

**WHEREAS,** after heavy rainfall events in November 2021, part of the slope on Borough land washed out and covered parts of the drainage features; and

**WHEREAS,** the Borough’s Land Management Division, after coordination with Bunkhouse Properties, consulted with a professional engineer to inspect the site and make recommendations; and

**WHEREAS,** the Borough Land Management Division and Bunkhouse Properties worked together to develop an agreement for the Borough to access and fix the project area, and structured a proposal for the assembly to consider transferring the slope to Bunkhouse Properties that would unify the future management of the features; and

**WHEREAS,** implementation of the agreement will be subject to separate assembly approvals as indicated in the agreement;

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

**SECTION 1.** That entering into a Drainage Installation and Work Agreement and Release of Liability (the “Agreement”) with Bunkhouse Properties, LLC is hereby approved.

**SECTION 2.** The mayor is authorized to execute an Agreement that is substantively consistent with the attached Agreement, and implement its terms subject to separate assembly approvals as required by Borough code as indicated in the Agreement.

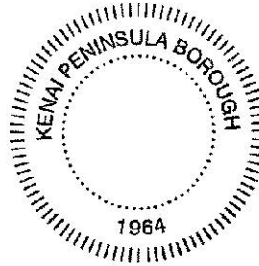
**SECTION 3.** This resolution shall be effective immediately upon adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 3RD DAY OF APRIL, 2022.**

  
Brent Johnson, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



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

Introduced by:	Mayor
Date:	08/23/22
Hearing:	09/06/22
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-37**

**AN ORDINANCE AUTHORIZING THE ASSESSOR TO ACCEPT ONE LATE FILED  
SENIOR CITIZEN EXEMPTION APPLICATION FILED AFTER MARCH 31 AND  
PROVIDING AN EXCEPTION TO KPB 5.12.040(B)**

**WHEREAS,** KPB 5.12.105(E) provides that an application for a senior citizen exemption application must be filed by March 31 of the year for which the exemption is sought; and

**WHEREAS,** in accordance with AS 29.45.030(f) and KPB 5.12.105(E) the assembly may, for good cause shown, waive the claimant's failure to make timely application and authorize the assessor to accept the application as if timely filed; and

**WHEREAS,** in accordance with KPB 5.12.105(E)(4) if an otherwise qualified claimant is unable to comply with the March 31 deadline for filing an application, and the inability to comply is caused by a serious condition or extraordinary event beyond the taxpayer's control, the assembly may, by resolution, waive the claimant's failure to file the application by such date, and authorize the assessor to accept the application as if timely filed; and

**WHEREAS,** the applicant has submitted an affidavit stating that he had extraordinary circumstance which prevented him from timely filing a 2022 senior citizen exemption application; and

**WHEREAS,** in accordance with KPB 5.12.040(B) the assessor shall not make changes to the assessment roll after June 1 except for the reasons provided therein, which do not include adjustments for the late-filed senior citizen exemption application; and

**WHEREAS,** an exception to KPB 5.12.040(B) is required because even when the assembly has approved a late-filed senior citizen exemption application after June 1, code does not allow the assessor to make a change to the assessment roll after June 1 due to a tax exemption status change;

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

**SECTION 1.** Upon reviewing the senior citizen exemption application and affidavit submitted, the assembly hereby waives the March 31 deadline for filing an application for the 2022 senior citizen exemption application based upon a finding that the applicant was unable to comply with that deadline due to a serious condition or extraordinary event beyond his control.

**SECTION 2.** That the assessor shall process the application in accordance with standard assessing department procedures for processing such applications.

**SECTION 3.** Notwithstanding KPB 5.12.040(B), in the event the assessor finds that the senior citizen application should be otherwise approved, the assessor is hereby authorized to make a change to the assessment roll after June 1, 2022 to reflect the approved exemption.

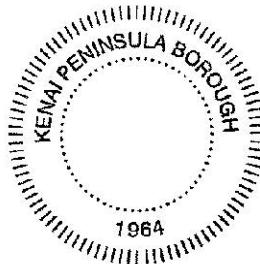
**SECTION 4.** That this ordinance shall be effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY OF SEPTEMBER, 2022.**

  
Brent Johnson, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



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

No: None

Absent: None




# Kenai Peninsula Borough


## Assessing Department

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### MEMORANDUM

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

**THRU:** Charlie Pierce, Mayor 

**FROM:** Adeena Wilcox, Borough Assessor 

**DATE:** August 11, 2022

**SUBJECT:** Ordinance 2022- 37, Authorizing the Assessor to Accept One Late-Filed Senior Citizen Exemption Application Filed after March 31 and Providing an Exception to KPB 5.12.040(B) (Mayor)

---

An applicant for a Senior Citizen Exemption has requested the Assembly allow the Borough Assessor to accept his late-filed real property tax exemption application filed after March 31, 2022.

The applicant, E.E., is being assisted by the Kenaitze Indian Tribe. E.E. lost his partner several years ago and she handled the paperwork for E.E. E.E. had COVID during the application period and his advocate could not assist him with his paperwork in a timely manner due to isolation.

KPB 5.12.105 and AS 29.45.030(f) allow for late-filed exemptions to be granted by the Assembly. For an application filed after March 31, the applicants must file an affidavit stating good cause for failure to comply with the deadline. Good cause is defined by KPB 5.12.105(E)(4) as:

... an inability to comply with the March 31 deadline that was caused by a serious condition or extraordinary event beyond the taxpayer's control. A serious condition or extraordinary event may include a serious medical condition or other similar serious condition or extraordinary event.

Based on a review of E.E.'s exemption application E.E. would qualify for the Senior Citizen Exemption if the Assembly authorizes E.E's. late-filed request.

Your consideration of the ordinance is appreciated

Introduced by:	Mayor
Date:	08/23/22
Hearing:	09/06/22
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-39**

**AN ORDINANCE OF ASSESSMENT CONFIRMING THE ASSESSMENT ROLL  
FOR THE LOOKOUT DRIVE UTILITY SPECIAL ASSESSMENT DISTRICT AND  
ESTABLISHING THE METHOD FOR TERMINATING ASSESSMENTS AND  
MAKING REFUNDS TO PROPERTY OWNERS**

- WHEREAS,** the borough mayor, on November 4, 2021, approved the petition application for the formation of the Lookout Drive Utility Special Assessment District ("the District"); and
- WHEREAS,** Resolution 2022-005 established the District and authorized the construction of the improvement; and
- WHEREAS,** Ordinance 2021-19-36 appropriated \$78,978.78 for the District natural gas line project; and
- WHEREAS,** the total costs of constructing the improvements, including all allowable amounts as provided in KPB 5.35.080 and AS 29.46.110 ("Costs") are now known; and
- WHEREAS,** the District special assessment roll has been prepared with the total Costs of the improvement spread equally among all the lots within the District; and
- WHEREAS,** the borough clerk has published a notice of the filing of the assessment roll once in a newspaper of general circulation within the Kenai Peninsula Borough (Borough) stating that such assessment has been made and is on file in the office of the borough clerk, and providing notice of the time and place for the hearing held September 6, 2022 where objections would be heard; and
- WHEREAS,** the assembly, on September 6, 2022, held a hearing on the assessment roll at which time all persons objecting to assessments were given an opportunity to present their objections; and
- WHEREAS,** notice of the assessment and hearing was mailed to each owner of record as shown on the rolls of the borough assessor not less than 10-days before the hearing; and
- WHEREAS,** the assembly found no errors or inequalities in the roll; and

**WHEREAS,** the assembly finds that the roll should be confirmed; and

**WHEREAS,** the mainline has been constructed and any necessary property acquisitions completed for the natural gas pipeline in the District (the "Project"); and

**WHEREAS,** special assessments will be levied on properties in the District that are specially benefited by the Project, and said special assessments, with interest thereon, will be sufficient (together with other amounts) and available to pay the actual cost to the Borough of the improvements plus interest;

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

**SECTION 1. Classification.** That this ordinance shall be a non-code ordinance.

**SECTION 2. Confirmation of Roll.** That the assessment roll for Lookout Drive Utility Special Assessment District, attached as Exhibit A to this ordinance, as presented to the assembly on February 15, 2022 in the total amount of \$78,978.78 is confirmed.

**SECTION 3. Notice of Assessment.** On the first day of the month following the enactment date of this ordinance, the finance director shall mail to the record owner of each property assessed a statement designating the property, the assessment amount, the schedule of payments, the time of delinquency, and penalties. Within five days after the statements are mailed, the finance director will publish a notice that the statements have been mailed and that the assessment roll is on file in the office of the borough clerk. After enactment of this ordinance the clerk shall file in the office of the Kenai District Recorder a notice of assessment on all parcels assessed within the utility special assessment district.

**SECTION 4. Payment of Assessment.** That the entire assessment may be prepaid without interest or penalty within 30- days of the date of mailing of the assessment statement. Thereafter, the assessment may be prepaid in whole or in part with interest to the payment date. Interest on the unpaid amount of the assessment shall accrue at the rate of 7.5% per annum. Assessments that are not prepaid shall be paid in 10 equal annual installments on March 31 of each year, commencing March 31, 2023. Installments shall include principal plus accrued interest.

**SECTION 5. Delinquencies.** That if an installment of the assessment is delinquent, the balance of the assessment, plus accrued interest, becomes due and delinquent 30- days after the date of notice of the installment delinquency. Notice of the delinquency shall be mailed to the owner of record. The notice must contain notice of the nonpayment of the installment and that the balance of the assessment, plus accrued interest, will become due and delinquent if the installment, interest and penalty are not paid within 30- days of the date of the notice. The penalty for delinquent installment and assessment payments is the same as the penalty for delinquent real property taxes in effect on the date of the delinquency.

**SECTION 6. Establishment of Reserve and Refund Accounts.**

- A. That there is established the District Reserve and Refund Account (the "Reserve and Refund Account").
- B. That there shall be paid into the Reserve and Refund Account:
  - 1. All monies received from ENSTAR Natural Gas Company that are refund entitlements arising out of new customers connecting to the gas line installed within the District; and
  - 2. The final refund due under the ENSTAR line extension tariff; and
  - 3. Interest on the average Reserve and Refund Account balance at the rate determined by the Finance Director to be the average interest earned on borough investments during the year.

**SECTION 7. Distribution of Reserve and Refund Account Funds.**

- A. The borough will refund the funds in the Reserve and Refund Account at the end of each fiscal year an amount equal to the fund balance divided by the number of lots within the District provided the refunded amount is greater than or equal to \$250.00 per parcel. If the amount is under \$250.00, the refund will be carried over to the following fiscal year. The order of refund will be: First, to any outstanding balance applied in the order of unpaid costs, penalty, interest, and then principal; and, Second, to the owner of record as shown on the most recent records of the borough assessor. If any lot within the District is divided into two or more lots, the refund for such re-subdivided lots shall be computed by counting the re-subdivided lots as a single lot for purposes of determining the initial refund entitlement. If any lots are consolidated, the converse shall apply. The initial refund entitlement shall then be divided equally among the subject lots. If an account is in a delinquent or foreclosure status, any such refund will be applied against the delinquent balance in the order described above.
- B. That upon the repayment to the borough of all indebtedness incurred for this assessment district or after the borough receives the final refund entitlements arising out of new customers connecting to the gas line, any funds remaining in the Reserve and Refund Account will be distributed as provided under this section.

**SECTION 8. Termination of Assessment and Refund of Pro Rata Share of Assessment Prepayments.**

- A. That upon the discharge of all indebtedness to the borough, all unpaid, non-delinquent assessment installments are cancelled. The finance director shall refund to the owner of record as shown on the records of the borough assessor an amount equal to the fund balance divided by the number of lots within the District.
- B. That for any lot upon which foreclosure proceedings to recover delinquent assessment installments has been commenced prior to the cancellation of remaining assessment installments, the amount due shall be recomputed as provided in subsection A, except there will be no refund.


**SECTION 9. Appropriation.** That there is appropriated for the purposes set out in this ordinance the refunds from ENSTAR attributable to the District, all assessments and interest in the District, assessment foreclosure proceeds and interest earned on the funds as provided in Section 6(B)(2). The appropriation under this section does not lapse until after the final refund required under section 7(A) has been made.

**SECTION 10. Authority for Ordinance.** That the borough has ascertained and hereby determines that each and every matter and thing as to which provision is made in this ordinance is necessary in order to carry out and effectuate the purposes of the Borough in accordance with our constitution and statutes of the State of Alaska, and the Code of Ordinances of the Kenai Peninsula Borough.

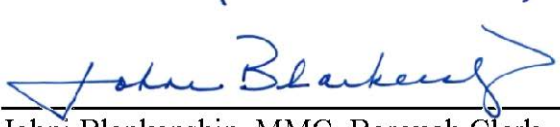
**SECTION 11. Severability.** That if any one or more of the covenants and agreements provided in this ordinance to be performed on the part of the borough is declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreements or agreements shall be null and void and shall be deemed separable from the remaining covenants and agreements in this ordinance and shall in no way affect the validity of the other provisions of this ordinance.

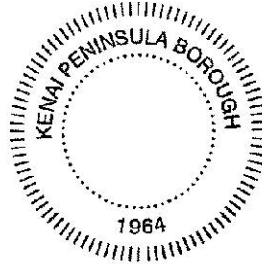
**SECTION 12. Effective Date.** That this ordinance shall be effective immediately upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY OF SEPTEMBER, 2022.

  
Brent Johnson, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



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

LOOKOUT DRIVE USAD - FINAL ASSESSMENT ROLL

Ordinance of Assessment

Enstar Construction Cost:	71,719.00
Enstar Non-Standard Cost:	0.00
<b>Enstar Final Cost:</b>	<b>71,719.00</b>
KPB Administration Cost:	7,259.78
<b>Total FINAL Project Cost:</b>	<b>78,978.78</b>

Total # of Parcels for Assessments:	18
<b>Cost Per Parcel:</b>	<b>4,387.71</b>

Non-Refundable Filing Fee per 5.35.07(D)(i): \$1,000

Paid: September 13, 2021

Total Assessed Value:	2021 Assessed Value (AV)
Total Project Cost:	78,978.78
(Less ) Total Paid Prepayments of Assessments:	<b>(4,387.71)</b>
<b>Total Assessments:</b>	<b>74,591.07</b>

18
14
77.78%
80.74%
0.00%

Total number of parcels petition signature percentage calculation:  
Total number of parcels in favor of project:  
Percentage of parcels in favor of project:  
Percentage of AV parcels in favor, district value:  
Current percentage of parcels in district delinquent in real property taxes:

PARCEL_ID	LEGAL	2022 ASSED VALUE	LIEN LIMIT <60% A.V. per 5.35.07(C)	MAXIMUM ASSESSMENT	PREPAYMENT REQUIRED 5.35.07(B)(4)(C)	PREPAYMENT Paid in Full 5.35.07(B)	CKI/DATE	OWNER	ADDRESS	CITY, ST, ZIP	VOTE IN FAVOR	VOTE IN FAVOR A.V.	DEL TAX	SPC ASMT
173-151-08	T 65 R 14W SEC 10 SEWARD MERIDIAN HM 0830081 BLUFF POINT SUB LOT 8	1,006,700	0.44%	4,387.71	0.00			SHAPIRO DAVID M	PO BOX 2477	HOMER, AK 99603	YES	1,006,700	NO	NO
173-151-09	T 65 R 14W SEC 16 SEWARD MERIDIAN HM 0830081 BLUFF POINT SUB LOT 9	134,400	3.26%	4,387.71	0.00			ZHOU XUHONG	PO BOX 1084	ARCADIA, CA 91077	YES	134,400	NO	NO
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173-630-28	T 65 R 14W SEC 9 SEWARD MERIDIAN HM 0770078 DIAMOND CAPE SUB UNIT 1 LOT 1 BLK 4	383,900	1.14%	4,387.71	0.00			SCHNEIDER PATRICK & DAWN	PO BOX 667	HOMER, AK 99603	YES	383,900	NO	NO
173-630-29	T 65 R 14W SEC 9 SEWARD MERIDIAN HM 0770078 DIAMOND CAPE SUB UNIT 1 LOT 2 BLK 4	168,000	2.61%	4,387.71	0.00			DONAHUE CLAIRE	1110 W 6TH AVE APT 202	ANCHORAGE, AK 99501	YES	168,000	NO	NO
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173-630-57	T 65 R 14W SEC 9 SEWARD MERIDIAN HM 0840114 DIAMOND CAPE SUB UNIT 1 RESUB LOT 3-B BLK 4	252,100	1.74%	4,387.71	0.00			NOLLAR DAVID W & KATHRYN L	32 N BUENA VISTA ST	REDLANDS, CA 92373	YES	252,100	NO	NO
173-630-58	T 65 R 14W SEC 9 SEWARD MERIDIAN HM 0990069 DIAMOND CAPE UNIT THREE LOT 2-A BLK 5	220,100	1.99%	4,387.71	0.00			CARLSON ROBERT A	14401 ELMORE RD	ANCHORAGE, AK 99516	YES	220,100	NO	NO
173-151-12 in process	T 65 R 14W SEC 16 SEWARD MERIDIAN HM 0830081 BLUFF POINT SUB LOT 12	437,700	1.00%	0.00	4,387.71	4,387.71	CC #267868 12/21/2021	CURRY CHRISTIE R	PO BOX 976	LA CONNER, WA 98257	YES	437,700	NO	NO
18	Total Benefitted Parcels										14	4,554,100	0	0

as of 7/27/2022


# Kenai Peninsula Borough


## Finance Department

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### MEMORANDUM

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

**THRU:** Charlie Pierce, Borough Mayor 

**FROM:** Brandi Harbaugh, Finance Director 

**DATE:** August 11, 2022

**SUBJECT:** Ordinance 2022-39, An Ordinance of Assessment Confirming the Assessment Roll for the Lookout Drive Utility Special Assessment District and Establishing the Method for Terminating Assessments and Making Refunds to Property Owners (Mayor)

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This ordinance confirms the final assessment roll for the Lookout Drive Utility Special Assessment District ("the District"). This is the final step for the borough in a process that began with the borough mayor approving the petition application for the formation of the District, the adoption of Resolution 2022-005 forming the District and authorizing construction of the natural gas mainline improvements, and the passage of Ordinance 2021-19-36, which appropriated \$78,978.78 for this project. This ordinance confirms the assessment roll and establishes the methods for terminating assessments and providing refunds to property owners, if necessary.

KPB 5.35.107(C)(a) requires that the owners of at least 60 percent of the parcels within the proposed district sign a petition approving the District and 77.78 percent have signed the petition in favor of this project. KPB 5.35.107(C)(b) requires that the owners of at least 60 percent in value of the property to be benefited in the proposed district sign a petition approving the District and 80.18 percent have signed the petition in favor of this project.

The gas mainline has been constructed and a bill has been presented to the borough for payment. The gas mainline benefits 18 parcels within the District. The total cost of the assessment is \$78,978.78. Based on equal allocation of the total cost of the project, the special assessment per lot in the District is \$4,387.71. The assessment may be prepaid without interest within 30-days of the notice of assessment. If not prepaid, the assessment is payable over a 10-year period in equal installments with interest accruing as provided in the attached ordinance. The assessment constitutes a lien on each parcel within the District.

Your consideration of this ordinance is appreciated.



LOOKOUT DRIVE USAD - FINAL ASSESSMENT ROLL

Ordinance of Assessment

Enstar Construction Cost:	71,719.00
Enstar Non-Standard Cost:	0.00
<b>Enstar Final Cost:</b>	<b>71,719.00</b>
KPB Administration Cost:	7,259.78
<b>Total FINAL Project Cost:</b>	<b>78,978.78</b>

Total # of Parcels for Assessments:	18
<b>Cost Per Parcel:</b>	<b>4,387.71</b>

Non-Refundable Filing Fee per 5.35.070(D): \$1,000

Paid: September 13, 2021

Total Assessed Value:	2021 Assessed Value (AV)
Total Project Cost:	78,978.78
(Less ) Total Paid Prepayments of Assessments:	<b>(4,387.71)</b>
<b>Total Assessments:</b>	<b>74,591.07</b>

Total number of parcels petition signature percentage calculation:	18
Total number of parcels in favor of project:	14
Percentage of parcels in favor:	77.78%
Percentage of AV parcels in favor, district value:	80.74%
Current percentage of parcels in district delinquent in real property taxes:	0.00%

PARCEL_ID	LEGAL	2022 ASSED VALUE	LIEN LIMIT <60% A.V. per 5.35.070(C)	MAXIMUM ASSESSMENT	PREPAYMENT REQUIRED 5.35.070(B)&(C)	PREPAYMENT Paid in Full 5.35.070(B)	CKN/DATE	OWNER	ADDRESS	CITY, ST, ZIP	VOTE IN FAVOR	VOTE IN FAVOR A.V.	DEL TAX	SPC ASMT
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18	Total Benefitted Parcels										14	4,554,100	0	0

as of 7/27/2022

<b>Pet Appl Approved:</b>	11/4/2021		
<b>Reso 2022- Form&amp;Proceed:</b>	2022-005	2/15/2022	
<b>Ord 2020- Appro:</b>	2021-19-36	2/15/2022	78,978.78
<b>Budget Revision:</b>	842-94912-LOOKD-43011	5/20/2022	78,899.78

(-79.00 recording fees)

Introduced by:	Mayor
Date:	02/15/22
Action:	Adopted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2022-005**

**A RESOLUTION TO FORM THE LOOKOUT DRIVE UTILITY SPECIAL  
ASSESSMENT DISTRICT AND PROCEED WITH THE IMPROVEMENT OF A  
NATURAL GAS MAIN LINE EXTENSION**

- WHEREAS,** Kenai Peninsula Borough Code (KPB) Chapter 5.35 authorizes the formation of utility special assessment districts within the Kenai Peninsula Borough; and
- WHEREAS,** an application for a petition to form a utility special assessment district (“USAD”) was received from the property owners within the proposed district; and
- WHEREAS,** on November 4, 2021, the Mayor approved the Administrative Review of the Petition Report, pursuant to KPB 5.35.105 requirements, for the formation of the Lookout Drive USAD for construction of a natural gas main line; and
- WHEREAS,** KPB 5.35.107(C) requires signatures of the owners of record of (a) at least 60 percent of the total number of parcels subject to assessment within the proposed district and (b) at least 60 percent in value of the property to be benefited, in order to be considered by the assembly for formation; and
- WHEREAS,** the owners of record of 77.78 percent of the total number of parcels, and 80.18 percent in value of the properties to be benefited, have signed the petition; and
- WHEREAS,** the petition was submitted timely by the sponsor on December 3, 2021, and on December 6, 2021, the borough clerk determined that the petition received bears sufficient signatures meeting the signature thresholds as required by KPB 5.35.107, and acknowledged receipt of a filing fee for \$1,000 as required by KPB 5.35.030(D); and
- WHEREAS,** the borough clerk gave notice of the public hearing for this resolution by certified mail, return receipt requested, mailed not less than 35 days before the date of the hearing, to each record owner of a parcel in the proposed district; and
- WHEREAS,** the borough clerk gave additional notice, by publication, once a week for two consecutive weeks in a newspaper of general circulation in the borough, with the first publication appearing not less than 30 days before the date of the hearing; and

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

**WHEREAS,** KPB 5.35.110(A) requires the mayor to prepare for assembly consideration a resolution to form the special assessment district and proceed with the improvement, and to submit with the resolution a copy of the petition as described in KPB 5.35.107(A);

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

**SECTION 1.** That the Kenai Peninsula Borough (“Borough”) shall form the Lookout Drive Utility Special Assessment District and the mayor is authorized to proceed with the construction of the improvement in accordance with the provisions of KPB Chapter 5.35, and negotiate and execute such documents as are determined to be in the best interests of the Borough to accomplish this project.

**SECTION 2.** That pursuant to the requirements of KPB 5.35.110, this resolution is supported by the mayor's report, which is attached hereto and incorporated herein by reference.

**SECTION 3.** That the proposed Lookout Drive USAD is necessary and should be made and is hereby formed, and the Borough shall proceed with the construction of an extension of Enstar’s natural gas main line to a district encompassing 18 benefited parcels in the area of Diamond Ridge, beginning at the intersection of Walter Thomas Road and Ridge Circle, north and including all of Lookout Drive.

**SECTION 4.** That the boundaries of the USAD for the natural gas main line set forth in the district map as mayor’s report Exhibit 1, page 15, and the properties legally described in the Estimate Assessment Roll as mayor’s report Exhibit 1, page 17, are hereby approved as comprising the USAD.

**SECTION 5.** That the estimated cost of the project of \$78,978.78, which includes direct costs of \$71,719.00 and KPB Administrative costs of \$7,259.78, is approved.

**SECTION 6.** That the attached Estimate Assessment Roll, mayor’s report Exhibit 1, page 17, which includes properties within the district to be properly included and subject to an assessment of \$4,387.71 per parcel for the improvement, is incorporated by reference herein and adopted.

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


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

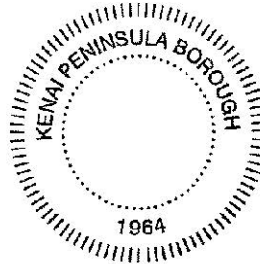
**SECTION 9.** That this resolution is effective immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 15TH DAY OF FEBRUARY, 2022.**

  
Brent Johnson, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



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

Introduced by:	Mayor
Date:	06/01/21
Hearing:	06/15/21
Action:	Enacted
Vote:	8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2020-19-36**

**AN ORDINANCE APPROPRIATING \$71,988.62 IN SUPPLEMENTAL FUNDING FOR  
REPAIRS TO THE LEACHATE TANK AT THE CENTRAL PENINSULA LANDFILL  
RESULTING FROM THE NOVEMBER 30, 2018 COOK INLET 7.0 EARTHQUAKE  
AND APPROVING THE AWARD TO CCI INDUSTRIAL SERVICES, LLC**

**WHEREAS,** Ordinance 2020-19-26 accepted a federal pass-through grant in the amount of \$205,797.38 from the State of Alaska Division of Homeland Security & Emergency Management by way of the Federal Emergency Management Agency (FEMA) Public Assistance (PA) Program to reimburse repairs at the Central Peninsula Landfill; and

**WHEREAS,** an additional \$71,988.62 is needed for construction contractual and forced account labor costs; and

**WHEREAS,** this cost overrun will be submitted for reimbursement through the FEMA PA program under project worksheet PW367; and

**WHEREAS,** CCI Industrial Services, LLC is a qualified vendor that provided the only bid under the borough's invitation to bid competitive process, which is stricter than the federal grant requirements of 2 CFR 200;

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

**SECTION 1.** That \$71,988.62 is appropriated from the General Fund fund balance to be transferred to 260.32122.19EQ1.49999 for Central Peninsula Landfill earthquake repairs.

**SECTION 2.** That the assembly approves the award of the contract with CCI Industrial Services, LLC in the amount of \$262,785.99 to complete repairs to the leachate tank.

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

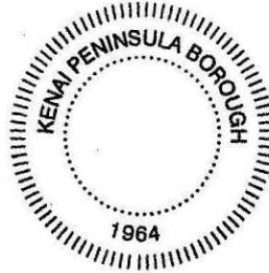
**SECTION 4.** That this ordinance takes effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 15TH DAY OF JUNE, 2021.**



Brent Hibbert, Assembly President

ATTEST:

  
Jonni Blankenship, MMC, Borough Clerk

Yes: Bjorkman, Carpenter, Chesley, Cox, Derkevorkian, Dunne, Johnson, Hibbert  
No: None  
Absent: Elam

Introduced by:	Johnson, Chesley
Date:	08/09/22
Hearing:	09/06/22 & 09/20/22
Action:	Introduced and set for public hearing
Vote:	7 Yes, 2 No, 0 Absent
Date:	09/06/22
Action:	Postponed to 10/25/22
Vote:	9 Yes, 0 No, 0 Absent
Date:	10/25/22
Action:	
Vote:	

## KENAI PENINSULA BOROUGH ORDINANCE 2022-36

### AN ORDINANCE AMENDING KPB CHAPTER 21.25 AND KPB CHAPTER 21.29 REGARDING CONDITIONAL LAND USE PERMITS AND MATERIAL SITE PERMITS, UPDATING NOTICE, APPLICABILITY, PERMIT TYPES, APPLICATION REQUIREMENTS, STANDARDS AND PERMITS CONDITIONS

**WHEREAS,** there are goals and objectives within the 2019 Kenai Peninsula Borough Comprehensive Plan to establish policies that better guide land use to minimize land use conflicts, maintain property values, protect natural systems and support individual land use freedoms, as well as strategy objectives to update the Borough's existing conditional use regulations for gravel extraction and other uses to better address reoccurring land use conflicts; and

**WHEREAS,** land use conflicts related to earth materials extraction and processing sites remain a point of contention within the Borough; and

**WHEREAS,** under current state law a first or second class borough shall provide for planning, platting, and land use regulation on an areawide basis, except where such powers have been delegated to a city within the Borough; and

**WHEREAS,** land use regulation includes zoning powers; and

**WHEREAS,** the Borough has enacted KPB Chapter 21.04, Zoning Districts, and has established two zoning districts: the municipal district and the rural district; and

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

**WHEREAS,** approximately 253 registered prior existing use material sites and approximately 104 conditional land use permits for material sites have been granted since 1996; and



- WHEREAS,** the assembly established a material site work group by adoption of Resolution 2018-004 (Substitute) to engage in a collaborative discussion involving the public and industry to make recommendations regarding the material site code; and
- WHEREAS,** the ordinance, Ordinance 2019-30, incorporating the final report and work group recommendations, failed enactment following public hearing and a vote during the assembly's October 24, 2019 meeting; and
- WHEREAS,** in late 2021, due to continued conflict including costly administrative and court appeals, the administration brought this land use issue back to the assembly and requested assembly action regarding the permitting process related to earth materials extraction and processing; and
- WHEREAS,** throughout this process the planning department, the material site work group, the planning commission, and the assembly have received many verbal and written public comments from Borough residents, professionals, and site operators; and
- WHEREAS,** the assembly first considered this issue by looking at the same ordinance that failed in 2019, relabeled Ordinance 2021-41; and
- WHEREAS,** Ordinance 2021-41 and a related substitute ordinance were tabled by the assembly at its February 1, 2022 to allow for consideration by the assembly as a committee of the whole, and
- WHEREAS,** the availability of three different types of conditional land use permits for material sites are designed to separate impacts of such uses and tailor applicable conditions and requirements to the associated impacts; and
- WHEREAS,** the Kenai Peninsula Borough recognizes the importance of implementing bonding, as applicable, to ensure neighboring properties and water sources are insured; and
- WHEREAS,** implementing a systematic process to determine a prior-existing use will allow the planning department to better identify the number of and types of pre-existing use sites in existence on the Kenai Peninsula and address complaints regarding nonconforming prior existing material sites; and
- WHEREAS,** requiring all prior-existing use operations to comply with reclamation plan and hours of operation requirements protects public health, safety, and general welfare; and
- WHEREAS,** requiring all prior-existing use operations which extract material below or within four feet of the seasonal highwater table to conduct operations in accordance with the requirements outlined in the relevant sections of code protects public health, safety, and general welfare; and

**WHEREAS,** buffer zones, dust control, hours of operation, and setbacks as mandatory conditions applicable to all permits, along with the discretionary conditions and conditions specific to processing or extraction with the water table, will reduce dust, noise, and attractive nuisances, thereby promoting public health, safety, and general welfare; and

**WHEREAS,** providing the planning director or planning commission the ability to add certain discretionary conditions recognizes the unique challenges material sites on the Kenai Peninsula present and that all conditions appropriate for one material site on one part of the Kenai Peninsula may not be appropriate for another site located on another part of the Kenai Peninsula; and

**WHEREAS,** after many years of work, public input, and public deliberative process, this ordinance enacts a new notice section to align with notice requirements of Title 20 of Borough code and enacts a new chapter of code related to material sites wherein it establishes a multi-permit system with standards and conditions applicable to each permit type that are intended to encourage responsible development while also protecting and promoting the public health, safety, and general welfare of all residents and visitors of the Kenai Peninsula Borough; and

**WHEREAS,** the planning commission at its regularly scheduled meeting held on \_\_\_\_\_ 2022, recommended \_\_\_\_\_;

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

**SECTION 1.** That KPB 21.25.050 is hereby amended as follows.

**21.25.050. Permit considerations—Public hearing required.**

- A. Within [21]30 days of receiving an application, the planning director or designee shall review the submitted application for completeness and compliance with this chapter. If it is incomplete or does not meet the requirements of this chapter, the planning director shall notify the applicant in writing. The planning director shall thereafter either return the application to the applicant or schedule the application to be considered by the planning commission at the next appropriate scheduled meeting.

...

**SECTION 2.** That the Kenai Peninsula Borough Code of Ordinances is hereby amended by repealing and reenacting KPB Chapter 21.25.060, Notice, which shall read as follows:

### **21.25.060. Notice.**

- A.     Except for counter permits for material sites issued under KPB 21.29.020(A) or expressly excepted elsewhere in this title, notice of any pending application required under this title shall be given in accordance with this section.
- B.     Required forms of notice are as follows:

  - 1.     Notice of the pending application will be published on the borough website.
  - 2.     When available, the notice will also be posted on a public bulletin of the impacted community.
  - 3.     At the beginning of the notice period a copy of the notice will be sent by First Class U.S. Mail to all owners and/or leaseholders of record of property located with a radius of one-half mile of the subject property.
- C.     The notice must contain a description of the proposed location, the type of proposed land use or a description of the action requested, as applicable, the applicant's name, where written comments may be submitted, the last deadline for submitting written comments to the planning commission, and the date, time and location of the public hearing.
- D.     The failure of any person to receive any notice required under this section, where the records of the borough indicate the notice was provided in a timely and proper manner, shall not affect the validity of any proceeding under this title or be basis for appeal.

**SECTION 3.** That the Kenai Peninsula Borough Code of Ordinances is hereby amended by repealing and reenacting KPB Chapter 21.29, Material Site Permits, which shall read as follows:

### **21.29.005. Intent and Purpose.**

The purpose of this chapter is to provide a land use permitting process to regulate the operation, scope, and duration of earth materials extraction and processing within the borough while promoting the public health, safety, and general welfare of the Kenai Peninsula Borough. It is the further purpose of this chapter to promote compatible, orderly development.

**21.29.010. Applicability.**

- A. This chapter applies to all private and public lands in the borough except where the use is prohibited by ordinance within a local option zoning district or exempt under KPB 21.29.015.
- B. This chapter does not apply within the incorporated cities of the Kenai Peninsula Borough.
- C. Earth material extraction within 300 linear feet from riparian wetlands and the seasonal high-water level of naturally-occurring open water bodies, such as a lake, pond, river, stream, or ocean, is prohibited. This prohibition does not apply to man-made water bodies or isolated ponds of less than one acre on private property.
- D. All operations must be conducted in accordance with the current publication of the State of Alaska, Alaska DEC User's Manual Best Management Practices for Gravel/Rock Aggregate Extraction Projects. In the event a provision of this chapter conflicts with the State of Alaska's manual, this chapter controls.

**21.29.015. Material extraction exempt from obtaining a permit.**

- A. Material extraction which disturbs an area of less than one acre that is not in a mapped flood plain or subject to 21.29.010(B), does not enter the water table, and does not cross property boundaries, does not require a permit. There will be no excavation within 32 feet of a lot line.
- B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood Service Area do not require a permit, however, operators subject to this exemption must provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations.
- C. A prior existing use under KPB 21.29.120 does not require a material extraction permit. Notwithstanding the foregoing, on or before January 1, 2026, a prior existing use under KPB 21.29.120 must: (1) provide a reclamation plan under KPB 21.29.060 that is approved by the planning director or designee; and (2) come into compliance with the buffer zone requirements under KPB 21.29.050(A)(1).

**21.29.020. Types of permits available.**

- A. Counter permit. A counter permit is required for earth material extraction which disturbs more than one acre and less than 10 cumulative un-reclaimed acres. Material processing, screening, or crushing, and material extraction within four feet of the seasonal high-water table is prohibited under a counter permit. A

counter permit is valid for a period of two years. Upon request from the applicant, the planning director, or designee, may grant one 12-month extension on a counter permit. Counter permits are approved by the planning director, or designees, and are not subject to notice requirements under KPB 21.25.060. The planning director's decision to approve or deny a counter permit may be appealed to the planning commission, which must act as the hearing officer, in accordance with KPB 21.20.

B. Conditional land use permit. A conditional land use permit (CLUP) is required for the following types of earth material extraction or uses:

1. Earth Materials Extraction CLUP. An Earth Materials Extraction CLUP is required for any material extraction which disturbs 10 or more cumulative acres. Material processing, screening or crushing, or extraction within four feet of the seasonal high-water table is prohibited under this permit. The standard conditions set out in KPB 21.29.050 are applicable to this type of CLUP.
2. Earth Materials Processing CLUP. An Earth Materials Processing CLUP is required for any operation that includes earth materials processing, screening, or crushing activities. The conditions set forth in KPB 21.29.050 plus the conditions set out in KPB 21.29.055 for material extraction processing area applicable to this type of CLUP.
3. Earth Materials Extraction Within Water Table CLUP. An Earth Materials Extraction within Water Table CLUP is required for material extraction and operations of any size within four feet of the seasonal high-water table. The conditions set forth in KPB 21.29.050 plus the requirements and conditions set forth in KPB 21.29.057 for material extraction within four feet of the seasonal high-water table are applicable to this type of CLUP.

An applicant may request a CLUP that includes one, two or all three of the above permit types. A CLUP is valid for a period of five years. A CLUP may be renewed in accordance with KPB 21.29.070. The provisions of KPB Chapter 21.25 are applicable to material site CLUPs and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.

### **21.29.030. Application procedure.**

A. In order to obtain a counter permit or CLUP under this chapter, an applicant must first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain

contiguous parcels are eligible for a single permit. The application must include the following items, without which the application will be deemed incomplete:

1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
2. Expected life span of the material site;
3. A buffer plan consistent with KPB 21.29.050(A)(1);
4. Reclamation plan consistent with KPB 21.29.060;
5. The depth of excavation;
6. Type of material to be extracted;
7. A site map provided by a professional surveyor licensed in the State of Alaska to include the following:
  - a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
  - b. Proposed buffers consistent with KPB 21.29.050(A)(1), or alternate buffer plan;
  - c. Identification of all encumbrances, including but not limited to, easements;
  - d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to submitting the application;
  - e. Anticipated haul routes, contingent on approval from the governmental agency with regulatory jurisdiction over the road;
  - f. Location of any processing areas on the parcel, if applicable;
  - g. North arrow;
  - h. The scale to which the site plan is drawn;
  - i. Preparer's name and date; and
  - j. Field verification must include staking the boundary of the parcel at sequentially visible intervals. The planning director may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious or staking is unnecessary.
8. A site plan, prepared by a qualified independent civil engineer licensed and active in the State of Alaska to include the following:
  - a. Surface water protection measures, if any, for adjacent properties, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;



2. Mining permit as required by the Alaska State Department of Natural Resources (ADNR) if extraction activities are to take place on state land;
3. Reclamation plan as required by ADNR, pursuant to A.S. 27.19;
4. Notice of intent for construction general permit or multi-sector general permit and storm water pollution prevention plan, and other associated permits or plans required by the Department of Environmental Conservation (DEC) pursuant to the Alaska Pollutant Discharge Elimination System (APDES) requirements;
5. United States Army Corps of Engineers (USACE) permit pursuant to Section 404 of the Clean Water Act, 33 U.S.C. 1344, if material extraction activity requires USACE approval; and
6. Any other applicable state or federal agency with regulatory authority of mining activities or earth materials extraction.

B. In addition to the requirements in subsection (A) of this section, all activity must be conducted in compliance with state or federal regulations governing the items listed below. Written documentation of compliance with these regulations is not required. Complaints received by the borough of violations of requirements within this section will be forwarded to the appropriate agency for enforcement, this includes but is not limited to:

1. Air quality.

- a. EPA air quality control permit is required for asphalt plants and crushers;
- b. ADNR burn permit is required for brush or stump burning. Combustibles must be stockpiled separate from noncombustibles, and burn permit requirements must be followed; and
- c. ADEC dust control and air quality regulations pertaining to burning activities must be followed.

2. Water quality. EPA or ADEC regulations controlling spills, spill reporting, storage and disposal of oil, anti-freeze and hydrocarbons.

3. Hazardous Materials. Use and storage of hazardous materials, waste and explosives.

- a. EPA regulations controlling use of hazardous materials must be followed; and
- b. U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives regulations must be followed when storing or using explosives.



- C. Failure to comply with any of the requirements in subsections (A) and (B) of this section is a violation of the permit, and is subject to enforcement pursuant to KPB Chapter 21.50.

**21.29.050. Permit conditions applicable to all permits.**

- A. The planning commission or planning director, as applicable, must impose the following mandatory conditions prior to approval of a permit under this chapter:

1. Buffer Zone.

- a. A buffer area of 32 feet must be established between the area of excavation and the parcel boundaries. The buffer area may include one or more of the following: undisturbed natural vegetation that provides sufficient noise and street-level visual screening; an eight-foot earthen berm with a 2:1 slope; or a minimum eight-foot fence;
- b. A 2:1 slope must be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if the site plan provides the timeframe for removal and verification that suitable, stabilizing material will replace the removed material within 30 days of removal;
- c. Where an easement exists, a buffer must not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable; and
- d. This requirement may only be waived upon a finding by the planning director or planning commission, as applicable, that a lot line where the waiver is requested is directly adjacent to another material site.

2. Water source separation.

- a. Material extraction below or within four feet of the seasonal high-water table is prohibited unless the applicant is issued a CLUP Material Extraction Within Water Table Permit and the requirements and conditions set forth in KPB 21.29.057 are satisfied;
- b. Dewatering either by pumping, ditching or some other form of draining that removes water from the site or causes water to leave the site is prohibited;
- c. All permits shall be issued with a condition which prohibits any material extraction within 100 linear feet of any private well or water source existing prior to original permit issuance; and

- d. On site movement of water may be permitted pursuant to KPB 21.29.057 and if: (i) the operator provides a statement under seal and supporting data from a qualified independent civil engineer licensed and active in the State of Alaska that the dewatering will not lower any known water systems; and (ii) the applicant posts a bond for liability for potential accrued damages in an amount equivalent to the cost to replace each water wells within a 300-foot radius of the site. The rebuttable presumption is that the cost per well is a minimum of \$10,000.
- 3. Roads. Operations that impact borough roads must be conducted in accordance with the requirements and remedies of KPB Chapter 14.40.
- 4. Dust control. Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
- 5. Hours of operation. Material extraction activities, including equipment operation, may only occur between the hours of 6:00 a.m. and 9:00 p.m. Alaska Standard Time (AKST), or as determined by the planning commission or planning director, as applicable, to be appropriate based on information presented.
  - a. Seasonal, project-based waiver. An applicant may request a seasonal, project-based waiver of the hours of operation requirements under this subsection. A waiver granted under this subsection is valid for six consecutive calendar months. To grant a waiver under this subsection, the commission must find that the waiver is necessary for a specific project, and that the waiver is not harmful to the public health, safety, and general welfare of borough residents.
- 6. Groundwater elevation. All material sites must maintain one monitoring well four feet below the proposed excavation per ten acres of excavated area.
- 7. Setback. Material site excavation areas must be 250 feet from the property boundaries of any local option zoning district, existing public school ground, private school ground, college campus, childcare facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation must be in addition to the 250-foot setback.

8. Permit boundaries. The buffers and any easements or right-of-way abutting the proposed permit area must be staked at sequentially visible intervals. Field verification and staking will require the services of a professional land surveyor. Stakes must be in place prior to issuance of the permit.
  9. Processing. Material extraction of any size that includes processing, screening, or crushing activities is prohibited unless the applicant is issued an Earth Materials Processing CLUP and the conditions set forth in KPB 21.29.055 are imposed on the permit.
- B. Discretionary Conditions. The planning commission or planning director, as applicable, may set conditions of approval for issuance of a counter permit or CLUP, as appropriate for the area in which the development is sited, for the following:
1. Setbacks/Buffer Area.
    - a. The mandatory buffer area condition in subsection (A) above may be increased, up to a maximum of 100 feet between the area of excavation and the parcel boundaries, if the planning commission finds based on substantial evidence presented that increasing the buffer area is necessary for the public health, welfare and safety of the surrounding community;
    - i. Upon request of the applicant, in lieu of any additional buffer area under this subsection designed to separate the use of material site activities from neighboring parcel boundaries, an eight-foot-high berm above the preexisting elevation may be constructed, prior to excavation, around the excavation area. If the excavation site area expands, the berm may move toward the permitted boundary until such limits of the permitted area are exhausted. The berm must be maintained at eight-foot height while permitted activity is occurring.
    - b. All other requirements of KPB 21.29.050(A)(1) apply; and
    - c. When a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required.
  2. Road maintenance and repair. In consultation with the Road Service Area Director, road maintenance or repair of public right-of-way haul routes may be required of the permittee.

3. Ingress and egress. The planning commission or planning director may determine the points of ingress and egress for the material site. The permittee is not required to construct haul routes outside the parcel boundaries of the material site. Driveway authorization must be acquired, from either the state through an “Approval to Construct” or the borough road service area, as appropriate, prior to issuance of a material site permit when accessing a public right-of-way.
4. Dust suppression. Dust suppression may be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on public right-of-way haul routes.
5. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8)(a).
6. Street-level screening. Street-level visual screening, noise mitigation, and lighting restrictions as appropriate for the surrounding area and in accordance with the standards set forth in KPB 21.29.040.

#### **21.29.055. Earth materials processing.**

In accordance with KPB 21.29.020(B)(2), a n Earth Materials Processing CLUP is required for earth materials processing activities, such as material screening or crushing. Prior to issuing a permit under this subsection, the planning commission must impose the mandatory conditions set forth in KPB 21.29.050(A) and discretionary conditions as the planning commission deems appropriate. In addition, the following requirements and permit conditions specific to an Earth Materials Processing CLUP apply:

- A. Setback. In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
- B. Hours of operation.
  1. Processing equipment may only be operated between 8:00 a.m. and 7:00 p.m. AKST, or as determined by the planning commission.
  2. The planning commission may grant exceptions to increase the hours of operation and processing in the event of an emergency or a good-cause finding that the increased hours of operation serve a public purpose and are not harmful to the public health, safety, and general welfare of borough residents. Such an exception shall not exceed 120 days.

3. Seasonal, project-based waiver. An applicant may request a seasonal, project-based waiver of the hours of operation requirements under this section. A waiver granted under this subsection is valid for six consecutive calendar months. To grant a waiver under this subsection, the commission must find that the waiver is necessary for a specific project, and that the waiver is not harmful to the public health, safety, and general welfare of borough residents.

**21.29.057. Material extraction below or within four feet of the seasonal high-water table.**

In accordance with KPB 21.29.020(B)(3), a CLUP is required for material extraction of material below or within four feet of the seasonal high water table. Prior to a permit being issued the planning commission must impose the mandatory conditions set forth in KPB 21.29.050(A) and discretionary conditions as deemed appropriate. In accordance with KPB 21.29.050(A)(2)(b) dewatering is prohibited. The following additional application requirements and permit conditions specific to a Material Extraction within the Water Table CLUP apply:

- A. Prior to application for a water table extraction permit, the following requirements must be met:
  1. Installation of a sufficient number of monitoring wells and test pits, as recommended by a qualified professional, to adequately determine groundwater flow direction, hydraulic gradient, water table and seasonal high-water table elevation. Monitoring well and test pit locations must provide the qualified professional with adequate information to characterize the entire property that will be permitted for material extraction. Well casing elevations must be surveyed to a vertical accuracy of 0.01 feet by a registered land surveyor and tied to NAVD 1988.
  2. Determination of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient, and water table elevation for the site must be measured under the supervision of a qualified professional.
  3. A written report must be completed by a qualified professional that makes a determination about the potential adverse effects to groundwater and surface water body elevation, groundwater and surface water quality, surrounding water users and adjacent properties. The determination must be based on available data, interpretations of the data and knowledge of groundwater processes.
  4. The report must be submitted with the CLUP application and must:
    - a. Identify existing public water system sources (i.e., wells, springs, surface water intakes), as identified by the state, that are located

within one-half mile of the boundary of the property on which the activity will take place;

- b. Identify actual or presumed private drinking water wells located within one-half mile of the boundary of the property on which the activity will take place and include a copy of the available well logs;
- c. Identify existing regulated potential sources of contamination within at least one-half mile of the boundary of the property on which the activity will take place;
- d. Contain maps at appropriate scales presenting the results of the well search, the setbacks required by subsection (C)(7) of this section, and illustrating wetlands and water bodies; at least one map must show identified potential sources of contamination;
- e. Include the water table elevation monitoring data, monitoring well logs and records of any test pits, and a discussion of the seasonal high-water table determination; and
- f. Evaluate subsurface hydrologic conditions and identify potential adverse effects that may occur as a result of material extraction. The evaluation of the hydrologic conditions must include identifying confining layers.

B. In addition to the application requirements for a CLUP for earth materials extraction, the application for a water table extraction permit must include:

- 1. A description of the proposed extent and depth of material extraction beneath the seasonal high-water table.
- 2. A written report that meets the requirements of subsection (A)(4) of this section, a monitoring plan, and a spill prevention, control, and countermeasures plan as required by this section.

C. *Conditions.* In addition to the requirements of KPB 21.29.050, operating conditions for extraction within or below four feet of the seasonal high-water table are as follows:

- 1. Implement a monitoring plan that meets the requirements of this chapter. If existing wells will provide sufficient data, no additional wells are required.
- 2. Implement the spill prevention, control and countermeasures plan in accordance with Environmental Protection Agency's requirements for above ground storage tank operations regardless of the quantity of petroleum products on site.
- 3. Groundwater flow direction, hydraulic gradient, and groundwater table elevation for the subject parcel must be measured at least monthly during active extraction. Monitoring wells must be maintained or replaced with equivalent monitoring wells.

4. Water elevation monitoring data must be retained for two years following completion of reclamation activities and must be provided to the planning director upon request.
5. A qualified professional must annually submit a report to the department that includes water table elevation monitoring data.
6. Operations must not breach or extract material from a confined aquifer or a confining layer beneath a perched aquifer.
  - a. If evidence suggests a confined aquifer or confining layer has been breached, or if groundwater or surface water elevation changes rapidly or beyond natural variation, the director must be notified within 24 hours.
    - i. A hydrologic assessment, conducted by a qualified professional, to determine the affected area and the nature and degree of effects and a description of potential repair or mitigation options must be submitted to the director within 14 calendar days of notification; and
    - ii. Repair or mitigation sufficient to address identified effects must be initiated as soon as practical, not to exceed 45 calendar days from the date the assessment is received by the director.
7. Operations must maintain the following setbacks:
  - a. 500 feet from the nearest down-gradient drinking water source;
  - b. 350 feet from the nearest cross-gradient drinking water source;
  - c. 200 feet from the nearest up-gradient drinking water source; and
  - d. Minimum separation distances do not apply to drinking water sources constructed after a permit to extract material below the water table has been issued.

#### **21.29.060. – Reclamation plan.**

- A. All material site permit applications require an overall reclamation plan. A site plan for reclamation must be required including a scaled drawing with finished contours. A five-year reclamation plan must be submitted with a permit renewal request.

- B. The applicant may revegetate and must reclaim all disturbed land within the time period approved with the reclamation plan so as to leave the land in a stable condition wherein a 2:1 slope is maintained. Any revegetation must be done with a non-invasive plant species. Bonding must be required at \$750.00 per acre for all acreage included in the current five-year reclamation plan. In the alternative, the planning director may accept a qualified professional's estimate for determining the amount of bonding. If the applicant is bonded with the state, the borough's bonding requirement is waived. Compliance with reclamation plans will be enforced under KPB 21.50.
- C. The following measures must be considered in the preparation, approval and implementation of the reclamation plan, although not all will be applicable to every reclamation plan:
1. The area will be backfilled, graded and re-contoured using strippings, overburden, and topsoil so that it will be stabilized to a condition that will allow for revegetation under KPB 21.29.060(B).
  2. The topsoil used for reclamation must be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by an independent, professional civil engineer licensed and active in the State of Alaska.
  3. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation must be removed from the site, buried or burned. Topsoil and other organics will be spread on the backfilled surface to inhibit erosion and promote natural revegetation.
  4. Topsoil mine operations must ensure a minimum of four inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).
  5. Ponding may be used as a reclamation method as approved by the planning commission.
  6. The area will be reclaimed in a manner that screens the site from becoming a public attractive nuisance and in a manner that is not harmful to public health, safety, and general welfare.
- D. The five-year reclamation plan must describe the total acreage to be reclaimed relative to the total excavation plan.
- E. Close-out. Reclamation plans and requirements survive expiration, termination, or revocation of a permit granted under this chapter. In order to close-out a permit, the planning director must be provided adequate proof that reclamation has been



conducted in accordance with the reclamation plan. If a permit expires, terminates, or is revoked prior to permit close-out, the remedies under KPB 21.50 apply and the planning director may hold applicable fines and remedies in abeyance upon a finding that reclamation is actively ongoing.

**21.29.065. Effect of permit denial.**

- A.      No reapplication concerning the same counter permit application may be filed within one calendar year of the date of the planning director's final denial action except in the case where new evidence or circumstances exist that were not available or present when the original application was filed.
- B.      No reapplication concerning the same CLUP may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original application was filed.
- C.      For the purposes of this section, the applicant bears the burden of proof of demonstrating that new evidence or circumstances exist and that they were not available or present with the original application was filed.

**21.29.070. Permit renewal, modification and revocation.**

- A.      Conditional land use permittees must submit a renewal application every five years after the permit is issued. A renewal application must be submitted at least 90 days prior to expiration of the CLUP.
- B.      The planning director may administratively approve a renewal application that meets the following requirements: (i) the permittee is in compliance with all permit conditions and no modification to operations or conditions are proposed; and (ii) the borough did not issue a notice of violation under the permit during the two calendar years preceding the renewal application. If the renewal application does not satisfy the foregoing requirements or if the planning director determines a review by the planning commission is warranted, then the planning commission will hear the renewal application.
- C.      In the event the renewal application is heard by the planning commission, the planning commission must hold a public hearing on the renewal application. If the applicant is complying with all permit conditions and requirements and is not in violation of borough code, then the renewal must be granted by the planning commission. Notwithstanding the foregoing, if the commission determines, after public hearing, that discretionary conditions are appropriate on renewal then the commission may modify the CLUP by imposing conditions as deemed appropriate under the circumstances. Permit renewal applications will be denied if the permittee is in violation of the original permit requirements and conditions or

borough code. A renewal application heard by the planning commission must be processed in accordance with the notice requirements of KPB 21.25.060.

- D. A permittee may request a modification of a CLUP or counter permit, as needed. A modification application will be processed pursuant to KPB 21.29.030 through KPB 21.29.050 with public notice given as provided by KPB 21.25.060. A permit modification is required if the permittee's operations are no longer consistent with the original permit application.
- E. The fee for a permit renewal or modification is the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.
- F. Failure to submit a permit renewal will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KPB 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.
- G. Permits may be revoked pursuant to KPB 21.50.

#### **21.29.080. Permit Close-out.**

When a permit expires, is revoked, or a permittee requests close-out of their permit, a review of permit conditions and site inspections will be conducted by the planning department to ensure code compliance and verify site reclamation prior to close-out. When the planning director determines that a site qualifies for close-out, a permit close-out document will be issued to the permittee to terminate the permit and associated requirements. Reclamation plans and requirements survive permit expiration and revocation. The planning director is only authorized to close-out a permit following reclamation. A permit close-out determination shall release any bonding associated with the permit.

#### **21.29.100. Recordation.**

All permits, permit extensions, modified permits, prior existing uses, and terminations shall be recorded. Failure to record a material site document does not affect the validity of the documents. The operator or owner of the material site is responsible for all associated permit recording fees.

#### **21.29.110. Violations.**

Violations of this chapter shall be governed by KPB 21.50 and this chapter.

### **21.29.115. Permit transfers.**

Permits issued under this chapter do not automatically transfer upon a conveyance or transfer of the applicable real property. The planning director will issue a letter of approval or disapproval upon receipt of the following: (1) a written permit transfer request is provided to the planning department that includes: legal description of the parcel, former owner name, new owner name, and a copy of the approved permit or the legal PEU status; and (2) a recorded conveyance instrument listing the new owner. The requesting party may appeal a disapproval letter to the planning commission. Permit transfer approvals are not subject to administrative appeal.

### **21.29.120. Prior-existing uses.**

- A. *Determination.* Prior-existing uses (PEU) in effect on October 1, 2022 are allowed to continue operation subject to the requirements of this section. The burden of proof that the prior-existing use existed before October 1, 2022 is on the applicant. If the planning director denies prior-existing use status, the applicant must comply with the permit requirements of this chapter. Failure to apply for a prior-existing use determination by January 1, 2024 will result in termination of all rights to continued operation as a nonconforming use and require full compliance with all provisions of this chapter.
- B. *Decision.* The planning director will give notice of the application for a prior-existing use determination to property owners within 100 feet of the subject parcel boundaries. The notice shall include a summary of the application, a vicinity map, and a deadline for submitting written comments or evidence regarding the existence of the use prior to the planning director issuing a decision. The planning director will issue a decision regarding the prior-existing use status based on the written application, written comments, or evidence regarding the existence of the use. The planning director's decision may be appealed by the applicant or affected property owners to the planning commission within 15 days of distribution of the decision.
- C. *Discontinuance.* Any prior-existing use which has ceased by discontinuance for an uninterrupted period of 365 days must thereafter conform to the permit requirements of this chapter. Lack of intent to cease use or abandon the use does not suspend the 365-day time period. If a prior-existing use is discontinued or abandoned, it may not be recommenced.
- D. *Expansion Prohibited.* A prior-existing use may not be increased, intensified, or expanded or moved to any other part of the lot, tract, or parcel it occupies after October 1, 2022, nor may the prior-existing use be moved to a parcel which is subject to this chapter. If a parcel is subdivided, the pre-existing use may not be expanded to any lot, tract, or parcel where material extraction or processing had not previously occurred or was not lawfully established in accordance with this section.
- E. *Standards.* In order to qualify as a legal prior-existing use, the use must meet the following standards, on or before October 1, 2022:

1. A use must have been legally established under prior law.
2. A use must be operational in accordance with the type of use.
- F. In accordance with 21.29.015, on or before January 1, 2026, all legal prior-existing-use extraction operations shall comply with KPB 21.29.060 (reclamation plan) and applicable hours of operation requirements under this chapter.
- G. Materials extraction operations with legal prior-existing use status which extract material below or within four feet of the seasonal highwater table shall conduct operations in accordance with the requirements outlined in KPB 21.29.057, except that KPB 21.29.057(C)(7) will not apply.
- H. For the purposes of this section, "increased, intensified, or expanded" means: (1) enlarging the area of excavation; (2) increasing the depth of excavation to go within four feet of the seasonal high-water table; or (3) adding a use that was not in existence as of the date of the PEU status determination, to include adding earth materials processing to a use that did not previously include processing.

#### **21.29.130. Definitions.**

- A. Unless the context requires otherwise, the following definitions apply to material site permits and activities:
  1. *Abandon* means to cease or discontinue a use without intent to resume, but excluding short-term interruptions to use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility or during normal periods of vacation or seasonal closure. An "intent to resume" can be shown through continuous operation of a portion of the facility, maintenance of utilities, or outside proof of continuance, e.g., bills of lading or delivery records. Abandonment also means the cessation of use, regardless of voluntariness, for a specified period of time.
  2. *Aggrieved Party* means a party of record adversely impacted by the decision of the hearing officer who participated before the hearing officer either by written or oral presentation.
  3. *Aquifer* means a subsurface formation that contains sufficient water-saturated permeable material to yield economical quantities of water to wells and springs.
  4. *Aquifer-confining layer* means that layer of relatively impermeable soil below an aquifer, typically clay, which confines water.
  5. *Assisted-living home* means a residential facility to which AS 47.33 applies, as described in AS 47.33.010.
  6. *Commercial* means any provision of services, sale of goods, or use operated for production of income whether or not income is derived, including sales, barter, rental, or trade of goods and services.

7. Conditioning or processing material means a value-added process including batch plants, asphalt plants, screening, washing, and crushing by use of machinery.
8. Exhausted means that all material of a commercial quality in a sand, gravel, or material site has been removed.
9. Groundwater means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.
10. Inactive site walls means a wall with a slope steeper than 1.5:1 where there has been no exaction activity for 180 consecutive days.
11. Isolated pond means no surface water inlet or outlet is present at any time of the year.
12. Person shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.
13. Qualified professional means a licensed professional engineer, hydrologist, hydrogeologist, or other similarly-licensed professional.
14. Quarter or Quarterly means January through March, April through June, July through September, or October through December;
15. Sand, gravel or material site means an area used for extracting, quarrying, or conditioning gravel or substances from the ground that are not subject to permits through the state location (mining claim) system (e.g., gold, silver, and other metals), nor energy minerals including but not limited to coal, oil, and gas.
16. Seasonal high groundwater table means the highest level to which the groundwater rises on an annual basis.
17. Stable condition means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes.
18. Surface water means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.
19. Topsoil means material suitable for vegetative growth.
20. Waterbody means any lake, pond, stream, riparian wetland, or groundwater into which stormwater runoff is directed.
21. Water source means a well, spring or other similar source that provides water for human consumptive use.

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

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

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Brent Johnson, Assembly President

ATTEST:

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Johni Blankenship, MMC, Borough Clerk

08/09/22 Vote on motion to introduce and set for public hearing:

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

No: Elam, Derkevorkian

Absent: None

09/06/22 Vote on motion to postpone to 10/25/22:

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

No: None

Absent: None

Yes:

No:


Absent:

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Richard Derkevorkian, Assembly member 

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian Amendment #1** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.010, as follows:

21.29.010. Applicability.

- A. This chapter applies to all private and public lands in the borough except where the use is prohibited by ordinance within a local option zoning district or exempt under KPB 21.29.015.
- B. This chapter does not apply within the incorporated cities of the Kenai Peninsula Borough.
- C. Earth material extraction within 300 linear feet from riparian wetlands and the seasonal high-water level of naturally occurring open water bodies, such as a lake, pond, river, **fish-bearing** stream, or ocean, is prohibited. This prohibition does not apply to **existing** man-made water bodies or isolated ponds of less than one acre on private property **or the construction of waterbodies within the permitted area.**
- D. All operations must be conducted in accordance with the current publication of the State of Alaska, Alaska DEC User's Manual Best Management Practices for Gravel/Rock Aggregate Extraction Projects. In the event a provision of this chapter conflicts with the State of Alaska's manual, this chapter controls.


Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Richard Derkevorkian, Assembly member 

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian Amendment #2** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.015, as follows:

21.29.015. Material extraction exempt from obtaining a permit.

- A. Material extraction which disturbs an area of less than one acre that is not in a mapped flood plain or subject to 21.29.010(B), does not enter the water table, and does not cross property boundaries, does not require a permit. There will be no excavation within [32]10 feet of a lot line.
- B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood Service Area do not require a permit, however, operators subject to this exemption must provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations.
- C. A prior existing use under KPB 21.29.120 does not require a material extraction permit. Notwithstanding the foregoing, on or before January 1, 2026, a prior existing use under KPB 21.29.120 must: (1) provide a reclamation plan under KPB 21.29.060 that is approved by the planning director or designee; and (2) come into compliance with the buffer zone requirements under KPB 21.29.050(A)(1).



**D. Material extraction from a public or private property which is necessary for the construction of a public or private development on the same property does not require a material extraction permit.**


Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Richard Derkevorkian, Assembly member 

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian Amendment #3** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.020, as follows:

21.29.020. Types of permits available.

- A. Counter permit. A counter permit is required for earth material extraction which disturbs more than one acre and less than ~~[10]~~**2.5** cumulative unreclaimed acres. Material ~~[processing,]~~ screening **over 500 cubic yards per day, [or]** crushing, ~~[and material extraction within four feet of the seasonal high-water table]~~ **and excavation within two feet of a confining layer** is prohibited under a counter permit. **A maximum of five feet excavation, and 7,500 square feet below seasonal high-water table is allowed. The excavation below water table must be 200 feet from the nearest potable water well.** A counter permit is valid for a period of two years. Upon request from the applicant, the planning director, or designee, may grant one 12-month extension on a counter permit. Counter permits are approved by the planning director, or designees, and are not subject to notice requirements under KPB 21.25.060. The planning director's decision to approve or deny a counter permit may be appealed to the planning commission, which must act as the hearing officer, in accordance with KPB 21.20. **The limited excavation within two feet of the seasonal high-water table included in this permit is exempt from KPB 21.29.057.**

B. Conditional land use permit. A conditional land use permit (CLUP) is required for the following types of earth material extraction or uses:

1. ~~[Earth Materials Extraction CLUP. An Earth Materials Extraction CLUP is required for any material extraction which disturbs 10 or more cumulative acres. Material processing, screening or crushing, or extraction within four feet of the seasonal high-water table is prohibited under this permit. The standard conditions set out in KPB 21.29.050 are applicable to this type of CLUP.]~~ A Type 1 CLUP. A Type 1 CLUP permit is required for earth material extraction which disturbs more than 2.5 cumulative un-reclaimed acres. Material screening over 500 cubic yards per day, or crushing, is prohibited under a type 1 permit. A maximum of five feet excavation below seasonal high-water table is allowed. The excavation below water table must be 200 feet from the nearest potable water well. Excavation within two feet of a confining layer is prohibited. No more than ten percent of the parcels total acreage may be in the water table. The conditions set forth in KPB 21.29.050 plus the conditions set out in KPB 21.29.055 for material extraction processing area applicable to this type of CLUP. The limited excavation within two feet of seasonal high-water table included in this permit is exempt from KPB 21.29.057.
2. ~~[Earth materials processing]~~ A Type 2 CLUP. A ~~[n Earth Materials Processing]~~ Type 2 CLUP is required for any operation that includes earth materials ~~[processing,]~~ screening over 500 cubic yards per day, or crushing activities. A maximum of eight feet excavation below seasonal high-water table is allowed. The excavation below water table must be 200 feet from the nearest potable water well. Excavation within two feet of a confining layer is prohibited. No more than ten percent of the parcels total acreage may be in the water table. The conditions set forth in KPB 21.29.050 plus the conditions set out in KPB 21.29.055 for material extraction processing area applicable to this type of CLUP. The limited excavation within two feet of seasonal high-water table included in this permit is exempt from KPB 21.29.057.
3. ~~[Earth Materials Extraction Within Water Table]~~ A Type 3 CLUP. A ~~[n Earth Materials Extraction Within Water Table]~~ Type 3 CLUP is required for material extraction and operations of any size within ~~[four]~~ two feet of the seasonal high-water table unless specified exempt from KPB 21.29.057. The excavation below water table must be 200 feet from the nearest

**potable water well. Excavation within two feet of a confining layer is prohibited. Screening and crushing is allowed.** The conditions set forth in KPB 21.29.050 plus the requirements and conditions set forth in KPB 21.29.057 for material extraction within ~~four~~ **two** feet of the seasonal high-water table are applicable to this type of CLUP.

An applicant may request a CLUP that includes one, two or all three of the above permit types. A CLUP is valid for a period of five years. A CLUP may be renewed in accordance with KPB 21.29.070. The provisions of KPB Chapter 21.25 are applicable to material site CLUPs and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.


Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Richard Derkevorkian, Assembly member 

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian Amendment #4** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.030, as follows:

21.29.030. Application procedure.

A. In order to obtain a counter permit or CLUP under this chapter, an applicant must first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application must include the following items, without which the application will be deemed incomplete:

1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
2. Expected life span of the material site;
3. A buffer plan consistent with KPB 21.29.050(A)(1);
4. Reclamation plan consistent with KPB 21.29.060;
5. The depth of excavation;
6. Type of material to be extracted;

7. A site map professional surveyor licensed in the State of Alaska to include the following:
- a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
  - b. Proposed buffers consistent with KPB 21.29.050(A)(1), or alternate buffer plan;
  - c. Identification of all encumbrances, including but not limited to, easements;
  - d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to submitting the application;
  - e. Anticipated haul routes; [~~contingent on approval from the governmental agency with regulatory jurisdiction over the road;~~]
  - f. Location of any processing areas on the parcel, if applicable;
  - g. North arrow;
  - h. The scale to which the site plan is drawn;
  - i. Preparer's name and date; and
  - j. Field verification must include staking the boundary of the parcel at sequentially visible intervals. The planning director may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious or staking is unnecessary.
8. A site plan, [~~prepared by a qualified independent civil engineer licensed and active in the State of Alaska~~] to include the following:
- a. Surface water protection measures, if any, for adjacent properties, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;
  - b. Location and elevation of test holes, and depth of groundwater, based on the seasonal high-water table. At least one test hole per ten acres of excavated area is required to be dug. The test holes must be at least four feet below the proposed lowest elevation of excavation depth **unless proposed depth is deeper than conventional equipment can dig without stage excavation;**
  - c. Location of all private wells of adjacent property owners within 300 feet of the proposed parcel boundary; and
  - d. Location of any water body on the parcel, including the location of any riparian wetland as determined by best available data.

9. A statement by the operator of the site that the requirements of KPB 21.29.045 have been satisfied.

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


Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Richard Derkevorkian, Assembly member 

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian Amendment #5** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.050, as follows:

21.29.050. Permit conditions applicable to all permits.

A. The planning commission or planning director, as applicable, must impose the following mandatory conditions prior to approval of a permit under this chapter:

1. Buffer Zone.

a. ~~[A buffer area of 32 feet must be established between the area of excavation and the parcel boundaries. The buffer area may include one or more of the following: undisturbed natural vegetation that provides sufficient noise and street-level visual screening; an eight-foot earthen berm with a 2:1 slope; or a minimum eight-foot fence;]~~  
The buffer zone for counter permits and CLUPs shall be of sufficient height, density, and setback to provide noise screening of the proposed use to parcels in the vicinity as deemed appropriate by the planning commission or planning director. Buffer requirements shall be made in consideration of and in accordance with existing uses of properties in the vicinity at the time of approval of the permit. There is no requirement to buffer the material site from uses which commence after the approval of the permit.



- b. A buffer zone shall be established between the area of excavation and the parcel boundaries. The buffer zone for a Type 1 CLUP shall consist of one of the following in any geographical area: fifty feet of natural vegetation, a minimum six-foot fence, or a minimum six-foot earthen berm with a 2:1 slope. The buffer zone for a Type 2 or Type 3 CLUP shall consist of one of the following in any geographical area: fifty feet of natural vegetation, a minimum eight-foot fence, or a minimum ten-foot earthen berm with a 2:1 slope. If the minimum buffers are insufficient to approve the permit, the applicant may modify the proposed buffers with evidence to a sufficient size in consideration of, and in accordance with the existing uses of properties in the vicinity for approval of a permit.**
- [b.]c. A 2:1 slope must be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if the site plan provides the timeframe for removal and verification that suitable, stabilizing material will replace the removed material within 30 days of removal;**
- [c.]d. Where an easement exists, a buffer must not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable; and**
- [d.]e. This requirement may only be waived upon a finding by the planning director or planning commission, as applicable, that a lot line where the waiver is requested is directly adjacent to another material site.**
- f. GIS, LIDAR, and photogrammetry may be utilized in the design of the buffer zone when differing elevations exist between the proposed site and properties in the vicinity. Using this technology's line of sight profile drawings from the uppermost inhabitable level of existing properties located in the vicinity may be utilized in the determination of sufficiency of the buffer zone.**
- g. At its discretion the planning director or planning commission (as applicable) may waive or reduce buffer requirements when screening proves to be not necessary or not feasible.**
- 2. Water source separation.**
- a. Material extraction below or within ~~[four]~~ two feet of the seasonal high-water table is prohibited unless the applicant is issued a CLUP Material Extraction Within Water Table Permit and the requirements and conditions set forth in KPB 21.29.057 are satisfied or the depth and**

size of excavation is exempt from KPB 21.29.057 as specified in the permit:

- b. Dewatering either by pumping, ditching or some other form of draining that removes **more than 5,000 gallons of water per day** from the site or causes water to leave the site is prohibited **unless permitted by State of Alaska, Department of Natural Resources**;
  - c. All permits shall be issued with a condition which prohibits any material extraction within 100 linear feet of any private well or **applicable** water source existing prior to original permit issuance; and
  - d. On site movement of water may be permitted pursuant to KPB 21.29.057 and if: (i) the operator provides a statement under seal and supporting data from a qualified independent civil engineer licensed and active in the State of Alaska that the dewatering will not lower any known water systems; and (ii) the applicant posts a bond for liability for potential accrued damages in an amount equivalent to the cost to replace each water wells within a 300-foot radius of the site. The rebuttable presumption is that the cost per well is a minimum of \$10,000.
3. Roads. Operations that impact borough roads must be conducted in accordance with the requirements and remedies of KPB Chapter 14.40.
4. Dust control. Dust suppression is required on haul roads within the boundaries of the **CLUP** material site by application of water or calcium chloride.
5. Hours of operation. Material extraction activities, including equipment operation, may only occur between the hours of 6:00 a.m. and 9:00 p.m. Alaska Standard Time (AKST), or as determined by the planning commission or planning director, as applicable, to be appropriate based on information presented.
- a. ~~[Seasonal.]~~ Project-based waiver. An applicant may request a ~~[seasonal.]~~ project-based waiver of the hours of operation requirements under this subsection. A waiver granted under this subsection is valid for **up to** six consecutive calendar months. To grant a waiver under this subsection, the commission must find that the waiver is necessary for a specific project, and that the waiver is not harmful to the public health, safety, and general welfare of borough residents.

6. Groundwater elevation. All material sites must maintain one monitoring well four feet below the proposed excavation per ten acres of excavated area.
  7. Setback. Material site excavation areas must be 250 feet from the property boundaries of any ~~[local option zoning district, ]~~existing public school ground, private school ground, college campus, **licensed** childcare facility, multi-purpose senior center, assisted living home, and licensed health care facility. **[If overlapping, the buffer areas of the excavation must be in addition to the 250-foot setback.]**
  8. Permit boundaries. The buffers and any easements or right-of-way abutting the proposed permit area must be staked at sequentially visible intervals. Field verification and staking will require the services of a professional land surveyor. Stakes must be in place prior to issuance of the permit.
  9. Processing. Material extraction of any size that includes processing, screening, or crushing activities is prohibited unless the applicant is issued an Earth Materials Processing CLUP and the conditions set forth in KPB 21.29.055 are imposed on the permit.
- B. Discretionary Conditions. The planning commission or planning director, as applicable, may set conditions of approval for issuance of a counter permit or CLUP, as appropriate for the area in which the development is sited, for the following:
1. Setbacks/Buffer Area.
    - a. The mandatory buffer area condition in subsection (A) above may be increased, up to a maximum of 100 feet between the area of excavation and the parcel boundaries, if the planning commission finds based on substantial evidence presented that increasing the buffer area is necessary for the public health, welfare and safety of the surrounding community;
      - i. Upon request of the applicant, in lieu of any additional buffer area under this subsection designed to separate the use of material site activities from neighboring parcel boundaries, an eight-foot-high berm above the preexisting elevation may be constructed, prior to excavation, around the excavation area. If the excavation site

area expands, the berm may move toward the permitted boundary until such limits of the permitted area are exhausted. The berm must be maintained at eight-foot height while permitted activity is occurring.

- b. All other requirements of KPB 21.29.050(A)(1) apply; and
  - c. When a buffer area has been denuded **less than a year** prior to review of the application by the planning commission or planning director revegetation may be required.
- 2. Road ~~[maintenance and]~~ repair. In consultation with the Road Service Area Director, ~~[road maintenance or]~~ repair of public right-of-way haul routes may be required of the permittee.
  - 3. Ingress and egress. The planning commission or planning director may **[determine] suggest** the points of ingress and egress for the material site. The permittee is not required to construct haul routes outside the parcel boundaries of the material site. Driveway authorization must be acquired, from either the state through an "Approval to Construct" or the borough road service area, as appropriate, prior to issuance of a material site permit when accessing a public right-of-way.
  - 4. Dust suppression. Dust suppression may be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on **[public right-of-way haul routes] haul routes within permit boundaries.**
  - 5. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8)(a).
  - 6. Street-level screening. Street-level visual screening, noise mitigation, and lighting restrictions as appropriate for the surrounding area and in accordance with the standards set forth in KPB 21.29.040.

Your consideration of these amendments is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Richard Derkevorkian, Assembly member *RD*

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian Amendment #6** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.055(B), as follows:

21.29.055. Earth materials processing.

~~[In accordance with KPB 21.29.020(B)(2), an Earth Materials Processing CLUP is required for earth materials processing activities, such as material screening or crushing.]~~ Prior to issuing a Type 2 CLUP [permit ] under this subsection, the planning commission must impose the mandatory conditions set forth in KPB 21.29.050(A) and discretionary conditions as the planning commission deems appropriate. In addition, the following requirements and permit conditions specific to a Type 2 CLUP ~~[an Earth Materials Processing CLUP]~~ apply:

...

B. Hours of operation.

1. Processing equipment may only be operated between ~~[8:00]~~ 7:00 a.m. and 7:00 p.m. AKST, or as determined by the planning commission.

...

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Richard Derkevorkian, Assembly member (RD)

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian Amendment #7** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.057, as follows:

21.29.057. Material extraction below or within ~~[four]~~ two feet of the seasonal high-water table.

In accordance with KPB 21.29.020(B)(3), a CLUP is required for material extraction of material below or within ~~[four]~~ two feet of the seasonal high water table. Prior to a permit being issued the planning commission must impose the mandatory conditions set forth in KPB 21.29.050(A) and discretionary conditions as deemed appropriate. In accordance with KPB 21.29.050(A)(2)(b) dewatering **over 5,000 gallons per day** is prohibited **unless permitted by the State of Alaska, Department of Natural Resources**. The following additional application requirements and permit conditions specific to a Material Extraction within the Water Table CLUP apply:

....

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Richard Derkevorkian, Assembly member (RD)

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian Amendment #8** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.060 as follows:

### 21.29.060. Reclamation plan.

- A. All material site permit applications require an overall reclamation plan. A site plan for reclamation must be required including a scaled drawing with finished contours. A five-year reclamation plan must be submitted with a permit renewal request. **All acreage planned for a post-mining use is exempt from reclamation.**
- B. The applicant may revegetate and must reclaim all disturbed land within the time period approved with the reclamation plan **if the planned resource extraction has been exhausted and no post-mining use is planned**, so as to leave the land in a stable condition wherein a 2:1 slope is maintained. Any revegetation must be done with a non-invasive plant species. Bonding must be required at \$750.00 per acre for all acreage included in the current five-year reclamation plan. In the alternative, the planning director may accept a qualified professional's estimate for determining the amount of bonding. If the applicant is bonded with the state, the borough's bonding requirement is waived. Compliance with reclamation plans will be enforced under KPB 21.50.
- C. The following measures must be considered in the preparation, approval and implementation of the reclamation plan, although not all will be applicable to every reclamation plan:

1. The area will be backfilled, graded and re-contoured using strippings, overburden, and topsoil so that it will be stabilized to a condition that will allow for revegetation under KPB 21.29.060(B).
  2. The topsoil used for reclamation must be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by an independent, professional civil engineer licensed and active in the State of Alaska.
  3. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation must be removed from the site, buried or burned. Topsoil and other organics will be spread on the backfilled surface to inhibit erosion and promote natural revegetation.
  4. Topsoil mine operations must ensure a minimum of four inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).
  5. Ponding may be used as a reclamation method as approved by the planning commission.
  6. The area will be reclaimed in a manner ~~[that screens the site from becoming a public attractive nuisance and in a manner]~~ that is not harmful to public health, safety, and general welfare.
- D. The five-year reclamation plan must describe the total acreage to be reclaimed relative to the total excavation plan.
- E. Close-out. Reclamation plans and requirements survive expiration, termination, or revocation of a permit granted under this chapter. In order to close-out a permit, the planning director must be provided adequate proof that reclamation has been conducted in accordance with the reclamation plan. If a permit expires, terminates, or is revoked prior to permit close-out, the remedies under KPB 21.50 apply and the planning director may hold applicable fines and remedies in abeyance upon a finding that reclamation is actively ongoing.

Your consideration of this amendment is appreciated.




# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Richard Derkevorkian, Assembly member 

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian Amendment #9** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

- Amend KPB Chapter 21.29 by adding Section 21.29.063, as follows:

**21.29.063. Decision.**

The planning commission or planning director, as applicable, shall approve permit applications whereby mandatory standards under KPB 21.29.040 have been met through implementation of conditions set forth in KPB 21.29.050, KPB 21.29.055, and KPB 21.29.057 or shall deny applications when conditions do not meet the mandatory standards in KPB 21.29.040. The decision shall include written findings detailing how the conditions under KPB 21.29.050, KPB 21.29.055, and KPB 21.29.057 meet, or do not meet the mandatory standards set forth in KPB 21.29.040 and evidence to support those findings. The decision shall be distributed to the parties of record before the planning commission, with notice of right to appeal.


Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Richard Derkevorkian, Assembly member 

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian Amendment #10** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

- Amend KPB Chapter 21.29 by removing Section 21.29.065 in its entirety, as follows:

**[21.29.065. Effect of permit denial.]**

- A. ~~No reapplication concerning the same counter permit application may be filed within one calendar year of the date of the planning director's final denial action except in the case where new evidence or circumstances exist that were not available or present when the original application was filed.~~**
- B. ~~No reapplication concerning the same CLUP may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original application was filed.~~**
- C. ~~For the purposes of this section, the applicant bears the burden of proof of demonstrating that new evidence or circumstances exist and that they were not available or present with the original application was filed.]~~**


Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Richard Derkevorkian, Assembly member 

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian Amendment #11** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.070, as follows:

21.29.070. Permit renewal, modification and revocation.

- A. Conditional land use permittees must submit a renewal application every five years after the permit is issued. A renewal application must be submitted at least 90 days prior to expiration of the CLUP.
- B. The planning director may administratively approve a renewal application that meets the following requirements: (i) the permittee is in compliance with all permit conditions and no modification to operations or conditions are proposed; and (ii) the borough did not issue a notice of violation under the permit during the two calendar years preceding the renewal application. If the renewal application does not satisfy the foregoing requirements or if the planning director determines a review by the planning commission is warranted, then the planning commission will hear the renewal application.
- C. In the event the renewal application is heard by the planning commission, the planning commission must hold a public hearing on the renewal application. If the applicant is complying with all permit conditions and requirements and is not in violation of borough code, then the renewal must be granted by the planning commission. **[Notwithstanding the foregoing, if the commission determines, after public hearing, that discretionary**

~~conditions are appropriate on renewal then the commission may modify the CLUP by imposing conditions as deemed appropriate under the circumstances.]~~ Permit renewal applications will be denied if the permittee is in violation of the original permit requirements and conditions or borough code. **The permittee will be given ninety days to correct violations. If the corrections are met, the permit will be renewed.** A renewal application heard by the planning commission must be processed in accordance with the notice requirements of KPB 21.25.060.

- D. A permittee may request a modification of a CLUP or counter permit, as needed. A modification application will be processed pursuant to KPB 21.29.030 through KPB 21.29.050 with public notice given as provided by KPB 21.25.060. A permit modification is required if the permittee's operations are no longer consistent with the original permit application.
- E. The fee for a permit renewal or modification is the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.
- F. Failure to submit a permit renewal will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KPB 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.
- G. Permits may be revoked pursuant to KPB 21.50.


Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Richard Derkevorkian, Assembly member 

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian Amendment #12** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.115, as follows:

21.29.115. Permit transfers.

~~[Permits issued under this chapter do not automatically transfer upon a conveyance or transfer of the applicable real property. The planning director will issue a letter of approval or disapproval upon receipt of the following: (1) a written permit transfer request is provided to the planning department that includes: legal description of the parcel, former owner name, new owner name, and a copy of the approved permit or the legal PEU status; and (2) a recorded conveyance instrument listing the new owner. The requesting party may appeal a disapproval letter to the planning commission. Permit transfer approvals are not subject to administrative appeal.]~~ Permits must transfer with the sale or transfer of the real property unless the permittee is currently in violation of the original permit requirements and conditions or borough code. The permittee will be given ninety days to correct violations.


Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Richard Derkevorkian, Assembly member 

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian Amendment #13** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.120, as follows:

21.29.120. Prior-existing uses.

- A. Determination. Prior-existing uses (PEU) in effect on October 1, 2022 are allowed to continue operation subject to the requirements of this section. The burden of proof that the prior-existing use existed before October 1, 2022 **and after May 21, 1996**, is on the applicant. **All other PEUs prior to May 21, 1996, are already recorded with the borough and are recognized.** If the planning director denies prior-existing use status, the applicant must comply with the permit requirements of this chapter. Failure to apply for a prior-existing use determination by January 1, 2024 will result in termination of all rights to continued operation as a nonconforming use and require full compliance with all provisions of this chapter.
- B. Decision. The planning director will give notice of the application for a prior-existing use determination to property owners within 100 feet of the subject parcel boundaries. The notice shall include a summary of the application, a vicinity map, and a deadline for submitting written comments or evidence regarding the existence of the use prior to the planning director issuing a decision. The planning director will issue a decision regarding the prior-existing use status based on the written application, **[written comments,]** or evidence regarding the existence of the use. The planning director's decision may be appealed by the applicant or affected property

owners to the planning commission within 15 days of distribution of the decision.

C. *Discontinuance.* Any prior-existing use which has ceased by discontinuance for an uninterrupted period of ~~[365 days]~~ **five years** must thereafter conform to the permit requirements of this chapter. Lack of intent to cease use or abandon the use does not suspend the ~~[365-day]~~ **five-year** time period. If a prior-existing use is discontinued or abandoned, it may not be recommenced. **Any activity such as extraction, excavation, processing, or reclamation is considered valid and a continuance of site use.**

D. *Expansion Prohibited.* ~~[A prior-existing use may not be increased, intensified, or expanded or moved to any other part of the lot, tract, or parcel it occupies after October 1, 2022, nor may the prior-existing use be moved to a parcel which is subject to this chapter.] The prior-existing use may not be moved to a parcel that is subject to this chapter. If a parcel is subdivided, the pre-existing use may not be expanded to any lot, tract, or parcel where material extraction or processing had not previously occurred or was not lawfully established in accordance with this section.~~

E. *Standards.* In order to qualify as a legal prior-existing use, the use must meet the following standards, on or before October 1, 2022:

1. A use must have been legally established under prior law.
2. A use must be operational in accordance with the type of use.

F. In accordance with 21.29.015, on or before January 1, 2026, all legal prior-existing-use extraction operations shall comply with KPB 21.29.060 (reclamation plan) and applicable hours of operation requirements under this chapter.

~~[G. Materials extraction operations with legal prior-existing use status which extract material below or within four feet of the seasonal highwater table shall conduct operations in accordance with the requirements outlined in KPB 21.29.057, except that KPB 21.29.057(C)(7) will not apply.]~~

~~[H. For the purposes of this section, "increased, intensified, or expanded" means: (1) enlarging the area of excavation; (2) increasing the depth of excavation to go within four feet of the seasonal high-water table; or (3) adding a use that was not in existence as of the date of the PEU status~~

**determination, to include adding earth materials processing to a use that did not previously include processing.]**

Your consideration of this amendment is appreciated.




# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Richard Derkevorkian, Assembly member 

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian Amendment #14** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.130, as follows:

21.29.130. Definitions.

A. Unless the context requires otherwise, the following definitions apply to material site permits and activities:

...

8. Earthen berm means a berm constructed of aggregate or soil not to contain slash or brush that maintains a 2:1 slope. The berm is to be constructed above the preexisting elevation.

...

21. Vicinity means 1,000 linear feet from permitted boundary.

Your consideration of this amendment is appreciated.

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
<b>KPB 21.25.050</b>	30-day staff review period of an application.	21-day staff review period of an application.	Increase from 21 to 30 days.	
<b>KPB 21.25.060 - Notice</b>	Notice published on KPB website; public bulletin; mailed to all owners/leaseholders within ½ mile radius of proposed site.	Requires notice published two times in newspaper, posted in the post office, copy of the notice sent by regular mail to all owners and/or leaseholders within one-half mile.	Expressly does not apply to counter permits.  No longer requires newspaper publication but allows for publication on KPB website.	
<b>KPB 21.29.005 - Intent and Purpose</b>	Establishes an intent and purpose section for KPB Chapter 21.29 with focus on public health, safety and general welfare, and to promote compatible, orderly development.	N/A	New code section.	
<b>KPB 21.29.010 - Applicability</b>	<p><b>A.</b> Applies to all private and public lands, except as preempted by other law;</p> <p><b>B.</b> Does not apply within the incorporated cities;</p> <p><b>C.</b> Prohibits extraction within 300 feet of riparian wetlands and naturally-occurring open water bodies;</p>	N/A	New code section to clarify applicability of chapter and fact that it does apply to both public and private lands outside of the incorporated cities unless otherwise exempt.	

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<b>D.</b> Operations must be conducted in accordance with current Alaska DEC Manual for extraction projects.			
<b>KPB 21.29.015 -Material extraction exempt from obtaining a permit</b>	<p><b>A.</b> Exempts extraction disturbing less than one acre if: -Not in floodplain; -Does not enter water table; and -Does not cross property boundaries.</p> <p>No excavation within 32' of lot line.</p> <p><b>B.</b> Exempts dewatered bars within SBCFSA/Snow River.</p> <p><b>C.</b> Exempts PEUs but by 2026 must: -Provide reclamation plan -Comply with buffer zone requirements</p>	<p>Currently 21.29.010</p> <p><b>A.</b> Exempts extraction disturbing less than one acre if: -Not in floodplain; -Does not enter water table; and -Does not cross property boundaries.</p> <p>No excavation within 20 feet of ROW or 10 feet of lot line.</p> <p><b>B.</b> Exempts dewatered bars within SBCFSA/ Snow River.</p> <p><b>C.</b> PEUs exempt but floodplain permit required within mapped special flood hazard area.</p>	<p>New code section.</p> <p>No excavation within 32' of lot lines.</p> <p>PEUs exempt but must provide reclamation plan &amp; comply with buffer zone requirements by 2026.</p>	<p>Require registration of excavation &lt;1 acre. Addresses the concern of how can KPB state no permit required yet stipulate buffer requirements, clarify that the buffer is not part of the 1 acre limitation.</p>

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
<b>KPB 21.29.020- Types of permits available</b>	<b>Counter permit</b> -1 to 10 acres -No processing -No water table extraction -Only 21.29.050 conditions apply.	Counter permit and generic CLUP only.  CLUP application requires all mandatory conditions and covers all uses.	Counter permit and three types of CLUPs.	<b>Counter Permits and Earth Materials Extraction CLUP -</b> Allow for up to 5k gallons of water withdrawal/ day, from well. Require proof of ADNR water withdrawal for amount in excess of 5k/ gallons/ day from a well, not create open pond with active excavation. Open water allowable, but requires water CLUP
	<b>Earth Materials Extraction CLUP</b> -Activity disturbing more than 10 acres -No processing -No water table extraction -Only 21.29.050 conditions apply		1 to 10 acres eligible for counter permit if no processing or water table extraction.	
	<b>Earth Materials Processing CLUP</b> -Required for all on- site processing, screening, or crushing -21.29.050 and 21.29.055 conditions apply		Three different CLUP categories: earth materials extraction (more than ten acres), earth materials processing, and earth materials extraction within water table.	Allow for up to 500 cubic yards of processing material between hours of 8AM to 6PM.
	<b>Earth Materials Extraction within Water Table CLUP</b> -Required for all earth materials extraction within water table -21.29.050 and		Applicant may apply for one, two, or all CLUP types.	<b>Earth Materials Processing CLUP</b> Add blasting as a type of processing. Clarify processing does not mean striping and

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	21.29.057 conditions apply			segregation with excavation equipment.
<b>KPB 21.29.030- Application procedure</b>	Very similar to current procedure. Requires site map from professional surveyor and site plan from professional engineer	-Legal description -Life span -Buffer plan -Reclamation plan -Excavation depth -Type of materials and equipment -Any voluntary permit conditions -Site plan	Breaks apart site map (professional surveyor) from site plan (professional engineer)  Application will be deemed incomplete without all items listed. (Not in current code.)	Revise to stipulate that Survey function is limited to existing site conditions prior to any activity.  Require engineer w/seal for all future site lay out plans
<b>KPB 21.29.040- Standards for sand, gravel or material sites</b>	Planning Director (counter permits) or Planning Commission (CLUPs) must find:  -Use is not inconsistent with applicable comp plan -Use will not be harmful to public's health, safety and general welfare -Provides sufficient setbacks, buffer zones, and other safeguards -Reclamation plan	-Protects against lowering of water sources serving other properties and damage to other properties -Minimizes off-site dust movement, noise disturbance, visual impacts & alternate post-mining land uses	All new standards/"may issue"  Focus on legitimate public purpose to protect against damage to public roads and adjacent properties as well as dust, noise and other impacts through setbacks, buffer zones, and street-level visual screening.	Amount of visual screening, if any, is a significant question, which we recognize from public testimony. Significant policy call with legal input.
<b>KPB 21.29.045</b>	Applicants required to demonstrate compliance with state and federal law through written	N/A	New code section.  Requires compliance with applicable	

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p>documentation from pertinent authorities:</p> <ul style="list-style-type: none"> <li>-Mining license (AK Dept of Revenue)</li> <li>-Mining permit (ADNR)</li> <li>-Permits and plans required by DEC</li> <li>-Permits from USACE, if applicable</li> <li>-Other applicable permits from other regulatory bodies authorized to regulate mining activities or earth materials extraction</li> </ul> <p>Must comply with other regulations such as air and water quality, and hazardous materials</p> <p>Violations subject to enforcement under 21.50</p>		<p>state/federal agencies prior to approval of KPB permit.</p> <p>All activity must comply with state/federal regulations governing air/water quality and hazardous materials.</p> <p>Violations subject to enforcement under 21.50.</p>	<p>Explicitly add ADNR for temporary water withdrawals</p>
<b>KPB 21.29.050</b>	<p><b>NINE MANDATORY CONDITIONS</b></p> <p><b>1. Buffers:</b> 32-foot buffer/may include natural vegetation for street-level visual and noise screening; 8-foot fence or berm with a 2:1</p>	<p><b>Buffers:</b> 50' of undisturbed natural vegetation, or 6' berm with at least 2:1 slope, or 6' fence. Material from slope may be removed if site plan provides removal timeframe and verification material will</p>	<p>Allows flexibility to meet demands of a specific application vs. "one size fits all" of current code.</p> <p><b>Buffers:</b></p> <ul style="list-style-type: none"> <li>-Street-level noise and visual screening (as</li> </ul>	<p>Berm height needs to be more flexible if screening requirements are to consider more 8' above elevation at property boundaries.</p>

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p>slope; 2:1 slope between buffer zone and floor on all inactive site walls. Material from slope may be removed if site plan provides removal timeframe and verification material will be replaced within 30 days.</p> <p><b>2. Water source separation:</b> No extraction below or within 4' of seasonal high-water table unless new section 21.29.057 conditions are met (Material Extraction within Water Table CLUP/see below); no off-site dewatering; no extraction within 100 feet of private well.</p> <p><b>3. Roads:</b> Operations impacting KPB roads must comply with 14.40 and subject to remedies in 14.40.</p> <p><b>4. Dust control:</b> Water or calcium chloride on haul</p>	<p>be replaced within 30 days. Planning Commission may waive where topography or placement of natural barriers make screening not feasible or unnecessary</p> <p><b>Water source separation:</b> No material extraction within 100 horizontal feet of any water source existing prior to permit issuance. Counter permits require four-foot vertical separation from seasonal high water table. CLUPs require two-foot vertical separation from seasonal high water table. No dewatering unless PC grants exemption.</p> <p><b>Roads:</b> Operations impacting KPB roads must comply with KPB 14.40.175 and subject to remedies in 14.40.</p>	<p>opposed to generic "noise and visual screening/impacts -Decrease from 50' vegetation to 32' -Increase from 6' to 8' minimum -Decision-maker may waive if lot line is directly adjacent to another material site</p> <p><b>Water source separation:</b> -Operations within water table governed by new section, 21.29.057 (see below) and require Material Extraction within Water Table CLUP -On site water movement permitted if qualified independent civil engineer provides statement under seal that dewatering will not lower any known water systems and applicant posts bond for potential accrued</p>	<p>Clarify that street level means elevation at property boundaries.</p> <p>"Note adjacent means adjoining in this instance, not separated by a ROW"</p>

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p>roads within boundaries of material site</p> <p><b>5. Hours of operation:</b> 6 am-9m but decision-maker may waive for specific seasonal project. Waiver valid for six consecutive months.</p> <p><b>6. Groundwater elevation:</b> Requires groundwater monitoring/one well 4' below proposed excavation per ten acres of excavated area.</p> <p><b>7. Setback:</b> 250' from LOZD/school/senior center/child care facility/etc.</p> <p><b>8. Boundaries:</b> Must stake buffers, ROWs, easements at visible intervals by professional land surveyor. Stakes must be placed prior to permit issuance.</p>	<p><b>Dust control:</b> Water or calcium chloride on haul roads within boundaries of material site</p> <p><b>Hours of operation:</b> Rock crushing equipment shall not be operated between 10 pm and 6 am.</p> <p><b>Boundaries:</b> Staked at sequentially visible intervals where boundaries are within 300' of excavation perimeter. Verification and staking by professional land surveyor.</p> <p><b>Processing:</b> See below.</p>	<p>damages in amount equivalent to replace each water well within 300-foot radius of site. Rebuttable presumption is each well is minimum of \$10,000.</p> <p><b>Roads/Dust control:</b> Essentially the same.</p> <p><b>Hours of operation:</b> For all extraction activities, 6 am to 9 pm but decision-maker can waive or adjust for specific seasonal project for period of six consecutive months.</p> <p><b>Groundwater elevation:</b> Requires groundwater monitoring.</p> <p><b>Setback:</b> 250' from LOZD/school/senior center/child care facility/etc.</p>	



Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p><b>9. Processing:</b> Must comply with conditions in new section 21.29.055 (Earth Materials Processing CLUP/see below.)</p> <p><b>SIX DISCRETIONARY CONDITIONS</b></p> <p><b>1. Setbacks/Buffer Areas:</b> Up to maximum of 100' if PC finds based on substantial evidence that increase is necessary for public health, welfare, and safety; potential for rolling berms instead.</p> <p><b>2. Road maintenance and repair:</b> Permittee may be required to maintain/repair damaged public roads; requires consultation with RSA Director.</p> <p><b>3. Ingress/egress:</b> Decision-maker may require driveway authorization.</p>		<p><b>Boundaries:</b> Stakes must be placed prior to permit issuance rather than time of application.</p> <p><b>Processing:</b> Requires compliance with new section 21.29.055 and Earth Materials Processing CLUP.</p> <p>Adds discretionary conditions:</p> <ul style="list-style-type: none"> <li>-Additional setbacks or rolling berms</li> <li>-Maintenance and repair of damaged public roads</li> <li>-Driveway authorization</li> <li>-Dust suppression on public ROWs</li> <li>-Surface water protections as set forth in 21.29.030(A)(8)(a)</li> <li>-Street-level screening as appropriate for surrounding area and</li> </ul>	

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p><b>4. Dust suppression:</b> On public ROWs when natural precipitation inadequate to suppress dust generated by material site traffic.</p> <p><b>5. Surface water protection:</b> As specified in 21.29.030(A)(8)(a).</p> <p><b>6. Street-level screening:</b> Street-level visual screening, noise mitigation, &amp; lighting restrictions as appropriate for the surrounding area and in accordance with 21.29.040 standards set to protect against attractive nuisance issues.</p>		to protect against attractive nuisances	
<b>KPB 21.29.055- Earth materials processing</b>	<p>In addition to mandatory conditions in 21.29.050(A).</p> <p><b>A.</b> Conditioning or processing equipment must be operated at least 300' from parcel boundaries. PC may waive or reduce distance</p>	<p>300' setback for conditioning or processing equipment.</p> <p>PC may waive or reduce in consideration of and in accordance with existing uses of adjacent property at the time.</p>	<p>New code section.</p> <p>PC may waive or reduce in consideration of and in accordance with existing uses of the "properties in the vicinity". Present code</p>	

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p>requirement in consideration of and in accordance with existing uses of properties in the vicinity.</p> <p><b>B.</b> Hours of operation for processing equipment between 8am and 7pm or as PC determines.</p> <p>PC may also grant exceptions (not to exceed 120 days) for:</p> <ul style="list-style-type: none"> <li>-Emergencies</li> <li>-Good cause finding that increase serves public purpose and is not harmful to public health, safety, and general welfare</li> </ul> <p>Applicant may request waiver (not to exceed six consecutive months) for specific seasonal project. PC must also find waiver is not harmful to the public health, safety and general welfare.</p>		<p>is "adjacent property".</p> <p>Processing equipment may only be operated between 8am and 7pm, may be increased for emergencies, to serve a public purpose or for specific, seasonal project.</p>	

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
<b>KPB 21.29.057- Material extraction in water table</b>	<p>In addition to mandatory conditions in 21.29.050(A).</p> <p>Dewatering prohibited (21.29.050(A)(2)(b)).</p> <p><b>A.</b> Applicant must meet the following requirements prior to applying:</p> <ol style="list-style-type: none"> <li>1. Installation of sufficient monitoring wells and test pits to provide qualified professional with adequate information to characterize the entire property that will be permitted for excavation.</li> <li>2. Under the supervision of a qualified professional, measurement of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient and water table elevation.</li> </ol>	<p>Excavation within 300' horizontal feet of water source may be permitted based on:</p> <ul style="list-style-type: none"> <li>-No negative impact to quantity of an aquifer serving existing water sources;</li> <li>-Minimum of three water monitoring tubes or well casings to determine flow direction, flow rate, and water elevation; and</li> <li>-Quarterly measurements of groundwater elevation, flow direction, and flow rate for at least four quarters prior to application. Tubes or wells must be kept in place for duration of excavation in water table.</li> </ul> <p>-Operations shall not breach aquifer-confining layer.</p> <p>No extraction activities within 100 linear feet from waterbodies.</p>	<p>New code section.</p> <p>In addition to 21.29.050 conditions, sets forth additional requirements and conditions primarily to protect water quantity.</p> <p>Qualified professional must be able to characterize entire property permitted for excavation through sufficient monitoring wells and test pits.</p> <p>Qualified professional must supervise measurement of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient and water table elevation.</p> <p>Based upon available data, interpretations of data and knowledge of groundwater</p>	

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p>3. A qualified professional's report determining the potential adverse effects to groundwater and surface water body elevation and quality, surrounding water users and adjacent properties. Determination based upon available data, interpretations of data and knowledge of groundwater processes.</p> <p>4. Report must be submitted with CLUP application. Subsection lists what must be included in the report.</p> <p><b>B.</b> Must also include:</p> <p>1. Description of proposed extent and depth of material extraction beneath seasonal high-water table.</p> <p>2. Report 21.29.057(A)(4) report, monitoring plan</p>	<p>Additional setback from lakes, rivers, anadromous streams and riparian wetlands may be required.</p> <p>-Permits may contain additional conditions addressing surface water diversion.</p>	<p>processes, qualified professional will report potential detrimental adverse effects to groundwater and surface water body elevation and quality, surrounding water users and adjacent properties. Must be submitted with application and also include extent and depth of extraction beneath seasonal high-water table, spill prevention/control/countermeasures plan.</p> <p>Conditions: -Implementation of monitoring and spill prevention/control/countermeasures plan; -Monthly measurement of groundwater and retention of groundwater data for two years after</p>	

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p>and spill prevention/control/countermeasures plan.</p> <p><b>C. Conditions</b></p> <ol style="list-style-type: none"> <li>1. Implement monitoring plan</li> <li>2. Implement spill prevention/control/countermeasures plan</li> <li>3. Monthly measurement (during active extraction) of groundwater flow direction, hydraulic gradient and groundwater table elevation</li> <li>4. Retain water elevation monitoring data for two years after completion of reclamation activities</li> <li>5. Annual report including water table elevation monitoring data from qualified professional</li> <li>6. Operations must not breach or extract material from a confined</li> </ol>		<p>completion of reclamation activities;</p> <ul style="list-style-type: none"> <li>-Annual report from qualified professional;</li> <li>-No breach or extraction from a confined aquifer or a confining layer beneath a perched aquifer; and</li> <li>-Setbacks from existing drinking water sources.</li> </ul>	

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p>aquifer or a confining layer beneath a perched aquifer. Subsection sets forth what must be done if there is a breach.</p> <p>7. Setbacks:            -500' from nearest down-gradient drinking water source            -350' from nearest cross-gradient drinking water source            -200' from nearest up-gradient drinking water source            -Do not apply to drinking water sources constructed after permit issued</p>			
<b>KPB 21.29.060 -Reclamation plan</b>	<p><b>A.</b> Reclamation with site plan required. 5 year reclamation plan must be submitted with permit renewal request.</p> <p><b>B.</b> Applicant may re-vegetate and reclaim all disturbed land upon exhausting the material site or time determined</p>	<p><b>A.</b> Reclamation Plan required.</p> <p><b>B.</b> Applicant shall vegetate and reclaim all disturbed land upon exhausting the material site or time determined by plan to leave land in a stable condition.</p>	<p>"May" rather than "shall" revegetate.</p> <p>Bonding required.</p> <p>Plan survives permit termination and must list total acreage to be reclaimed.</p>	

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p>by plan to leave land in a stable condition. 2:1 slope must be maintained. \$750 per acre bond required unless state bond. Enforcement under KPB 21.50.</p> <p><b>C.</b> Measures listed must be considered as part of every reclamation plan, 6 reclamation measures including ponding and protection against public nuisance.</p> <p><b>D.</b> Plan must list total acreage to be reclaimed.</p> <p><b>E.</b> Close-out – reclamation survives permit expiration, termination or revocation.</p>	<p>Reclamation must occur for area exceeding 5 acres prior to 5 year renewal or as PC specifies.</p> <p><b>C.</b> Measures listed must be considered as part of every reclamation plan, 6 reclamation measures including ponding.</p> <p><b>D.</b> Plan must list total acreage to be reclaimed each year, a list of equipment and a time schedule for reclamation measures.</p>	Protection against public nuisance.	
<b>KPB 21.29.065 -Effect of permit denial</b>	<b>A.</b> Applicant denied counter permit cannot reapply within same calendar year w/out new evidence or circumstances.	N/A	An applicant cannot immediately reapply for a permit after denial.	



Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p><b>B.</b> Applicant denied CLUP permit cannot reapply within same calendar year w/out new evidence or circumstances.</p> <p><b>C.</b> Applicant bears burden of proof.</p>			
<b>KPB 21.29.070 -Permit renewal, modification and revocation</b>	<p><b>A.</b> Renewal by application every 5 years.</p> <p><b>B.</b> Administrative approval if compliance with all conditions, no modification and no violation in prior 2 years.</p> <p><b>C.</b> Public hearing on renewal required when there is a modification, permit violation, or as determined by planning director. Permit in compliance with no violations must be approved for renewal but the commission can add additional conditions where appropriate.</p>	<p><b>A.</b> Must request permit extension every 5 years, 30 days prior to expiration.</p> <p><b>B.</b> If no modification to operations or conditions proposed, a permit extension certificate may be issued by planning director.</p> <p><b>C.</b> Extension may be denied if: (1) not in compliance with reclamation requirements; (2) non-compliance with permit conditions; (3) permit violation in last 2 years and still in non-compliance.</p>	<p>Renewal application not request in writing.</p> <p>Possibility for public hearing on renewal and additional discretionary conditions on renewal.</p>	

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p><b>D.</b> Modifications processed per KPB 21.29.030 -.050</p> <p><b>E.</b> Renewal fee is same as original permit fee.</p> <p><b>F.</b> Failure to apply for renewal = permit expiration.</p> <p><b>G.</b> Permits revoked per KPB 21.50.</p>	<p><b>D.</b> Modification processed per KPB 21.29.030-.050.</p> <p><b>E.</b> No fee for permit extensions approved by planning director. The fee for a permit modification processed under KPB 21.29.070(D) requires original permit fee.</p> <p><b>F.</b> Failure to apply for renewal = permit expiration.</p> <p><b>G.</b> Permits revoked per KPB 21.50.</p>		
<b>KPB 21.29.080 -Permit Close-out</b>	<p>Requires permittee to request close-out of permit and verification of reclamation compliance.</p> <p>Bonding released at close-out.</p>	<p>Current code section is titled "Permit Termination" and provides for a termination document and verification of site reclamation.</p>	<p>Terminology change from permit "termination" to "close-out". Explicit that reclamation requirement survives permit expiration or revocation &amp; that bonds are released upon close-out.</p>	

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
<b>KPB 21.29.100 -Recordation</b>	Provides for recordation of permits, etc. issued under KPB 21.29. Owner/operator responsible for cost.	Similar recordation requirement.	Owner/operator responsible for recording costs.	
<b>KPB 21.29.110 -Violations</b>	Violations governed by KPB 21.50.	Same but also has subsection (B) which provides for bonding if owner/operator has 3 violations within a 3-year period.	Violations governed by KPB 21.50 remain unchanged. No subsection B related to bonding requirement if there are 3 violations in 3 year period.	
<b>KPB 21.29.115 -Permit transfers</b>	Planning director approves or disapproves permit transfers. Permits do not run with the land.	N/A	New section of code.	
<b>KPB 21.29.120 -Prior-existing uses</b>	<p><b>A.</b> Determination – mirrors process under KPB 21.44 (LOZD) for nonconforming-use determination</p> <p><b>B.</b> Director provides notice of application and issues decision. Decision can be appealed to the Planning Commission.</p> <p><b>C.</b> Establishes 365-day period for abandonment.</p>	<p><b>A.</b> Requires determination that use as a material site commenced or operated after May 21, 1986 and prior to May 21, 1996. Limited subdivision rights. PEU runs with land.</p> <p><b>B.</b> Must have applied to be registered as a PEU prior to January 1, 2001.</p>	<p>By 1/1/2026, PEUs required to come into compliance with:</p> <ul style="list-style-type: none"> <li>-Reclamation requirements;</li> <li>-Hours of operation; &amp;</li> <li>-Buffer area.</li> </ul> <p>365 period of nonuse/ no operations = Abandonment</p>	Modify 365 days of no use to: 5years=abandonment

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p><b>D.</b> Prohibits increasing, intensifying or expanding or moving the use.</p> <p><b>E.</b> Establishes standards to guide decision-making process.</p> <p><b>F.</b> Requires PEU compliance with KPB 21.29 reclamation plan and hours of operation by January 1, 2026.</p> <p><b>G.</b> Requires PEU compliance with code requirements for extraction within water table under KPB 21.29.057, except the water source separation requirements do not apply.</p>	<p><b>C.</b> Abandonment if no operation as a material site between 5/21/1996 and 5/21/2011. Owner may protest finding of abandonment and may appeal decision to the Planning Commission.</p>		<p>F. ADD some flexibility to the acceptable reclamation plans for PEUs that can demonstrate hardship in achieving standards.</p> <p>i.e.: Topsoil requirements <i>Sites that have not planned for this may have undue hardship.</i></p>

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Mike Tupper, Assembly Member *MT*

**DATE:** October 13, 2022

**SUBJECT:** **Tupper Amendment #1** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.020(A), as follows:

21.29.020. Types of permits available.

A. Counter permit. A counter permit is required for earth material extraction which disturbs more than one acre and less than **2.5** cumulative unreclaimed acres. Material processing, screening, or crushing, and material extraction within four feet of the seasonal high-water table is prohibited under a counter permit. A counter permit is valid for a period of two years. Upon request from the applicant, the planning director, or designee, may grant one 12-month extension on a counter permit. Counter permits are approved by the planning director, or designees, and are not subject to notice requirements under KPB 21.25.060. The planning director's decision to approve or deny a counter permit may be appealed to the planning commission, which must act as the hearing officer, in accordance with KPB 21.20.

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Mike Tupper, Assembly Member *MT*

**DATE:** October 13, 2022

**SUBJECT:** **Tupper Amendment #2** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.020(B), as follows:

21.29.020. Types of permits available.

B. Conditional land use permit. A conditional land use permit (CLUP) is required for the following types of earth material extraction or uses:

1. ~~[Earth Materials Extraction CLUP. An Earth Materials Extraction CLUP is required for any material extraction which disturbs 10 or more cumulative acres. Material processing, screening or crushing, or extraction within four feet of the seasonal high-water table is prohibited under this permit. The standard conditions set out in KPB 21.29.050 are applicable to this type of CLUP.]~~ Type 1 CLUP. Earth Materials Extraction with Restricted Processing CLUP. An Earth Materials Extraction with Restricted Processing CLUP is required for any material extraction which disturbs 2.5 or more cumulative acres. Processing is restricted to one portable two-deck screen capable of screening or classifying material, limited to a maximum of 500 cubic yards per day. Extraction within four feet of the seasonal high-water table is prohibited under this permit. The conditions set out in KPB 21.29.050 and .055 are applicable to this type of CLUP.

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2. ~~[Earth materials processing] Type 2 CLUP. A [n-Earth Materials Processing] Type 2~~ CLUP is required for any operation that includes earth materials processing, screening or crushing activities. The conditions set forth in KPB 21.29.050 plus the conditions set out in KPB 21.29.055 for material extraction processing area applicable to this type of CLUP.
3. ~~[Earth Materials Extraction Within Water Table] A Type 3~~ CLUP. A ~~[n-Earth Materials Extraction Within Water Table] Type 3~~ CLUP is required for material extraction and operations of any size within four feet of the seasonal high-water table. The conditions set forth in KPB 21.29.050 plus the requirements and conditions set forth in KPB 21.29.057 for material extraction within four feet of the seasonal high-water table are applicable to this type of CLUP.

An applicant may request a CLUP that includes one, two or all three of the above permit types. A CLUP is valid for a period of five years. A CLUP may be renewed in accordance with KPB 21.29.070. The provisions of KPB Chapter 21.25 are applicable to material site CLUPs and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Mike Tupper, Assembly Member *MT*

**DATE:** October 13, 2022

**SUBJECT:** **Tupper Amendment #3** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.040, as follows:

21.29.040. Standards for sand, gravel or material sites.

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, **visual**, and other impacts of earth materials extraction to properties in the vicinity through setbacks and buffer zones. Prior to granting a counter permit or a conditional land use permit under this chapter, the planning director or planning commission, as applicable, must make the following findings:

1. That the use is not inconsistent with the applicable comprehensive plan;
2. That the use will not be harmful to the public's health, safety, and general welfare;
3. That sufficient setbacks, buffer zones, and other safeguards are being provided consistent with this chapter; **[and]**
4. That the use provides for a reclamation plan consistent with this chapter~~[-]~~ ; **and**



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**5. That the use will preserve the value and character of the surrounding area.**

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Mike Tupper, Assembly Member *MT*

**DATE:** October 13, 2022

**SUBJECT:** **Tupper Amendment #4** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.050(A)(1), as follows:

21.29.050. Permit conditions applicable to all permits.

A. The planning commission or planning director, as applicable, must impose the following mandatory conditions prior to approval of a permit under this chapter:

1. Buffer Zone.

a. ~~[A buffer area of 32 feet must be established between the area of excavation and the parcel boundaries. The buffer area may include one or more of the following: undisturbed natural vegetation that provides sufficient noise and street-level visual screening; an eight-foot earthen berm with a 2:1 slope; or a minimum eight-foot fence.]~~  
The buffer zone for counter permits and CLUPs shall be of sufficient height, density, and setback to provide visual and noise screening of the proposed use to parcels in the vicinity as deemed appropriate by the planning commission or planning director. Buffer requirements shall be made in consideration of and in accordance with existing uses of properties in the vicinity at the time of approval of the permit. There is no requirement to buffer the material site from uses which commence after the approval of the permit.

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- b. A buffer zone shall be established between the area of excavation and the parcel boundaries. The buffer zone for a Counter Permit and a Type 1 CLUP shall consist of one or any combination of the following: Fifty feet of natural vegetation, a minimum six-foot fence, a minimum six-foot earthen berm with a minimum 2:1 slope. The buffer zone for a Type 2 or a Type 3 CLUP shall consist of one of the following: Minimum eight-foot fence, or a minimum fifty feet of natural vegetation and a minimum ten-foot earthen berm with a minimum 2:1 slope.**
- [b.]c. A 2:1 slope must be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if the site plan provides the timeframe for removal and verification that suitable, stabilizing material will replace the removed material within 30 days of removal;**
- [c.]d. Where an easement exists, a buffer must not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable; and**
- [d.]e. This requirement may ~~[only]~~ be waived upon a finding by the planning director or planning commission, as applicable, that a lot line where the waiver is requested is ~~[directly adjacent to]~~ adjoining another material site or industrial use.**
- f. Geographic Information System (GIS), photogrammetry, or LIDAR may be utilized in the design of the buffer zone when differing elevations exist between the proposed site and properties in the vicinity. Using this technology, line of sight profile drawings from the uppermost inhabitable level of existing properties located in the vicinity may be utilized in the determination of sufficiency of the buffer zone.**
- g. At its discretion the planning director or planning commission (as applicable) may waive or reduce buffer requirements when screening proves to be not necessary or not feasible.**

Your consideration of these amendments is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Mike Tupper, Assembly Member *MT*

**DATE:** October 13, 2022

**SUBJECT:** **Tupper Amendment #5** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.050(B), as follows:

21.29.050. Permit conditions applicable to all permits.

B. Discretionary Conditions. The planning commission or planning director, as applicable, may set conditions of approval for issuance of a counter permit or CLUP, as appropriate for the area in which the development is sited, for the following:

1. Setbacks/Buffer Area.

a. The mandatory buffer area condition in subsection (A) above may be increased ~~[, up to a maximum of 100 feet]~~ between the area of excavation and the parcel boundaries if the planning commission finds based on substantial evidence presented that increasing the buffer area is necessary for the public health, welfare and safety of the ~~[surrounding community]~~ vicinity;

i. ~~[Upon request of the applicant, in lieu of any additional buffer area under this subsection designed to separate the use of material site activities from neighboring parcel boundaries, an eight-foot-high berm above the preexisting elevation may be constructed, prior to excavation, around the excavation area. If the excavation site area expands, the berm may move toward the permitted~~

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~~boundary until such limits of the permitted area are exhausted. The berm must be maintained at eight-foot height while permitted activity is occurring.]~~ The planning commission may require that an earthen berm with a minimum 2:1 slope of the height determined by the planning commission under KPB 21.29.050 shall be constructed above preexisting elevation around the excavation area. As the excavation area expands, the berm shall be moved toward negatively-impacted properties in the vicinity until such limits of the permitted area are exhausted. The berm must be maintained at the predetermined height while permitted activity is occurring. This earthen berm may be in addition to other buffer zone conditions imposed by the planning commission, or required by KPB 21.29.050.

- b. All other requirements of KPB 21.29.050(A)(1) apply; and
  - c. When a buffer area has been denuded less than a year prior to review of the application by the planning commission or planning director revegetation may be required.
2. Road ~~[maintenance and]~~ repair. In consultation with the Road Service Area Director, ~~[road maintenance or]~~ repair of public right-of-way haul routes may be required of the permittee.
  3. *Ingress and egress.* The planning commission or planning director may ~~[determine]~~ **suggest** the points of ingress and egress for the material site. The permittee is not required to construct haul routes outside the parcel boundaries of the material site. Driveway authorization must be acquired, from either the state through an "Approval to Construct" or the borough road service area, as appropriate, prior to issuance of a material site permit when accessing a public right-of-way.
  4. *Dust suppression.* Dust suppression may be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on ~~[public right-of-way haul routes]~~ **haul routes within permit boundaries.**
  5. *Surface water protection.* Use of surface water protection measures as specified in KPB 21.29.030(A)(8)(a).

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~~6. Street-level screening. Street-level visual screening, noise mitigation, and lighting restrictions as appropriate for the surrounding area and in accordance with the standards set forth in KPB 21.29.040.]~~

7. Noise suppression. At the discretion of the planning commission or planning director, as applicable, multi-frequency (white noise) back-up alarms may be required on all equipment and vehicular traffic on site as a condition to help meet the noise impact standard in accordance with and in consideration of existing uses in the vicinity.

Your consideration of these amendments is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Mike Tupper, Assembly Member *MT*

**DATE:** October 13, 2022

**SUBJECT:** **Tupper Amendment #6** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.050 by adding KPB 21.29.050(C), as follows:

21.29.050. Permit conditions applicable to all permits.

**C. Volunteered Permit Conditions. Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission or planning director, as applicable. Such conditions must be consistent with the standards set forth in KPB 21.29.040. Planning commission approval of such conditions shall be contingent upon a finding that the condition will be in the best interest of the borough and surrounding property owners. Volunteered permit conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in volunteered conditions may be proposed at permit renewal.**

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**Thru:** Mike Navarre, Mayor <sup>MN</sup>  
Max Best, Chief of Staff <sup>MB</sup>

**FROM:** Robert Ruffner, Planning Director <sup>RR</sup>

**DATE:** October 13, 2022

**SUBJECT:** **Administrative Amendment #1** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.010, as follows:

21.29.010. Applicability.

- A. This chapter applies to all private and public lands in the borough except where the use is prohibited by ordinance within a local option zoning district or exempt under KPB 21.29.015.
- B. This chapter does not apply within the incorporated cities of the Kenai Peninsula Borough.
- C. Earth material extraction within 300 linear feet from riparian wetlands and the seasonal high-water level of naturally occurring open water bodies, such as a lake, pond, river, stream, or ocean, is prohibited. This prohibition does not apply to man-made water bodies or isolated ponds of less than one acre on private property.
- D. All operations must be conducted in accordance with the current publication of the State of Alaska, Alaska DEC User's Manual Best Management Practices for Gravel/Rock Aggregate Extraction Projects. In



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the event a provision of this chapter conflicts with the State of Alaska's manual, this chapter controls.

- E. Up to 5,000 gallons of water per day may be withdrawn from a well. Proof of an ADNR use authorization is required for withdrawal of water in excess of 5,000 gallons per day from a well, as long as there is no open pond with active excavation. Open water is allowed only with an approved settling pond per KPB 21.29.055 or in conjunction with a CLUP approved pursuant to KPB 21.29.057 (earth materials extraction within the water table CLUP).**

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**Thru:** Mike Navarre, Mayor *MN*  
Max Best, Chief of Staff *MB*

**FROM:** Robert Ruffner, Planning Director *RR*

**DATE:** October 13, 2022

**SUBJECT:** **Administrative Amendment #2** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.015, as follows:

21.29.015. Material extraction exempt from obtaining a permit.

- A. Material extraction which disturbs an area of less than one acre that is not in a mapped flood plain or subject to 21.29.010(B), does not enter the water table, and does not cross property boundaries, does not require a permit. ~~[There will be no excavation within 32 feet of a lot line.] An owner or operator exempt under this subsection must register with the borough on a form provided by the planning department and must comply with KPB 21.29.010(C).~~
- B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood Service Area do not require a permit, however, operators subject to this exemption must provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations.

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Re: Administrative Amendment #2

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C. A prior existing use that is in full compliance with all provisions of [under]  
KPB 21.29.120 does not require a material extraction permit.  
~~[Notwithstanding the foregoing, on or before January 1, 2026, a prior~~  
~~existing use under KPB 21.29.120 must: (1) provide a reclamation plan~~  
~~under KPB 21.29.060 that is approved by the planning director or designee;~~  
~~and (2) come into compliance with the buffer zone requirements under~~  
~~KPB 21.29.050(A)(1).]~~

~~D. A 300-foot buffer from riparian and riverine wetlands must be maintained.~~

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**Thru:** Mike Navarre, Mayor *MN*  
Max Best, Chief of Staff *MB*

**FROM:** Robert Ruffner, Planning Director *RR*

**DATE:** October 13, 2022

**SUBJECT:** **Administrative Amendment #3** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.030, as follows:

21.29.030. Application procedure.

A. In order to obtain a counter permit or CLUP under this chapter, an applicant must first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application must include the following items, without which the application will be deemed incomplete:

1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
2. Expected life span of the material site;
3. A buffer plan consistent with KPB 21.29.050(A)(1);

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4. Reclamation plan consistent with KPB 21.29.060;
5. The depth of excavation;
6. Type of material to be extracted;
7. A site map professional surveyor licensed in the State of Alaska to include the following:
  - a. ~~Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase~~ Location and elevation of test holes, and depth of groundwater, based on the seasonal high-water table. At least one test hole per ten acres of excavated area is required to be dug. The test holes must be at least four feet below the proposed lowest elevation of excavation depth;
  - b. ~~Proposed buffers consistent with KPB 21.29.050(A)(1), or alternate buffer plan~~ Location of all private wells of adjacent property owners within 300 feet of the proposed parcel boundary;
  - c. Identification of all encumbrances, including but not limited to, easements;
  - d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to submitting the application;
  - ~~e. Anticipated haul routes, contingent on approval from the governmental agency with regulatory jurisdiction over the road;~~
  - ~~f.] e. Location of any processing areas on the parcel, if applicable~~ Identify and label all drainage features entering and exiting property;
  - ~~g.] f. Location of any water body on the parcel, including the location of any riparian wetland as determined by best available data;~~
  - g. North arrow;
  - ~~h.] h. The scale to which the site plan is drawn;~~
  - ~~i.] i. Preparer's name and date; and~~
  - ~~i.] j. Field verification must include staking the boundary of the parcel at sequentially visible intervals. The planning director may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious or staking is unnecessary.~~
8. A site plan, prepared by a qualified independent civil engineer licensed and active in the State of Alaska to include the following:

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- a. Surface water protection measures, if any, for adjacent properties, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;
  - b. ~~Location and elevation of test holes, and depth of groundwater, based on the seasonal high-water table. At least one test hole per ten acres of excavated area is required to be dug. The test holes must be at least four feet below the proposed lowest elevation of excavation depth;~~ Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
  - c. ~~Location of all private wells of adjacent property owners within 300 feet of the proposed parcel boundary;~~ Proposed buffers consistent with KPB 21.29.050(A)(1), or alternate buffer plan; and
  - ~~Location of any water body on the parcel, including the location of any riparian wetland as determined by best available data.;~~
  - d. Anticipated haul routes, contingent on approval from the governmental agency with regulatory jurisdiction over the road; and
  - e. Location of any processing areas on the parcel, if applicable.
9. A statement by the operator of the site that the requirements of KPB 21.29.045 have been satisfied.
- B. In order to aid the planning commission or planning director's decision-making process, the planning director may provide vicinity, aerial, land use, and ownership maps for each application and may include additional information.

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**Thru:** Mike Navarre, Mayor *MN*  
Max Best, Chief of Staff *MB*

**FROM:** Robert Ruffner, Planning Director *RR*

**DATE:** October 13, 2022

**SUBJECT:** **Administrative Amendment #4** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.045, as follows:

### **21.29.045. Required compliance with State and Federal laws**

- A. All applicants for permits for earth materials extraction are required to demonstrate compliance with state and federal law. Prior to final approval of the permit, the applicant or agent must provide written documentation from the permitting agency of compliance with the following:
  1. ~~[Mining license as required by the Alaska State Department of Revenue, pursuant to AS 43.65]~~ An Alaska State Department of Natural Resources (ADNR) temporary water use authorization if the Applicant intends for water to leave the site. If water leaves the site, the applicant must adhere to the provisions of the ADNR temporary water use authorization;
  2. Mining permit as required by ~~[the Alaska State Department of Natural Resources (ADNR)]~~ if extraction activities are to take place on state land;
  3. Reclamation plan as required by ADNR, pursuant to A.S. 27.19;

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4. Notice of intent for construction general permit or multi-sector general permit and storm water pollution prevention plan, and other associated permits or plans required by the Department of Environmental Conservation (DEC) pursuant to the Alaska Pollutant Discharge Elimination System (APDES) requirements;
  5. United States Army Corps of Engineers (USACE) permit pursuant to Section 404 of the Clean Water Act, 33 U.S.C. 1344, if material extraction activity requires USACE approval; and
  6. Any other applicable state or federal agency with regulatory authority of mining activities or earth materials extraction.
- B. In addition to the requirements in subsection (A) of this section, all activity must be conducted in compliance with state or federal regulations governing the items listed below. Written documentation of compliance with these regulations is not required. Complaints received by the borough of violations of requirements within this section will be forwarded to the appropriate agency for enforcement, this includes but is not limited to:
1. Air quality.
    - a. EPA air quality control permit is required for asphalt plants and crushers;
    - b. ADNR burn permit is required for brush or stump burning. Combustibles must be stockpiled separate from noncombustibles, and burn permit requirements must be followed; and
    - c. ADEC dust control and air quality regulations pertaining to burning activities must be followed.
  2. Water quality. EPA or ADEC regulations controlling spills, spill reporting, storage and disposal of oil, anti-freeze and hydrocarbons.
  3. Hazardous Materials. Use and storage of hazardous materials, waste and explosives.
    - a. EPA regulations controlling use of hazardous materials must be followed; and
    - b. U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives regulations must be followed when storing or using explosives.



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Re: Administrative Amendment #4

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C. Failure to comply with any of the requirements in subsections (A) and (B) of this section is a violation of the permit, and is subject to enforcement pursuant to KPB Chapter 21.50.

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**Thru:** Mike Navarre, Mayor *MN*  
Max Best, Chief of Staff *MB*

**FROM:** Robert Ruffner, Planning Director *RR*

**DATE:** October 13, 2022

**SUBJECT:** **Administrative Amendment #5** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.050, as follows:

21.29.050. Permit conditions applicable to all permits.

A. The planning commission or planning director, as applicable, must impose the following mandatory conditions prior to approval of a permit under this chapter:

1. Buffer Zone.

- a. A buffer area of 32 feet must be established between the area of excavation and the parcel boundaries. The buffer area may include one or more of the following: undisturbed natural vegetation that provides sufficient noise and street-level visual screening; an eight-foot earthen berm with a 2:1 slope; or a minimum eight-foot fence. **Berms should not alter natural drainage features;**
- b. A 2:1 slope must be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if the site plan provides

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Re: Administrative Amendment #5

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- the timeframe for removal and verification that suitable, stabilizing material will replace the removed material within 30 days of removal;
- c. Where an easement exists, a buffer must not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable; and
- d. This requirement may only be waived upon a finding by the planning director or planning commission, as applicable, that a lot line where the waiver is requested is directly adjacent to another material site.

2. Water source separation.

- a. Material extraction below or within four feet of the seasonal high-water table is prohibited unless the applicant is issued a CLUP Material Extraction Within Water Table Permit and the requirements and conditions set forth in KPB 21.29.057 are satisfied;
- b. Dewatering either by pumping, ditching or some other form of draining that removes water from the site or causes water to leave the site is prohibited;
- c. All permits shall be issued with a condition which prohibits any material extraction within 100 linear feet of any private well or water source existing prior to original permit issuance; and
- d. On site movement of water may be permitted pursuant to KPB 21.29.057 and if: (i) the operator provides a statement under seal and supporting data from a qualified independent civil engineer licensed and active in the State of Alaska that the dewatering will not lower any known water systems; and (ii) the applicant posts a bond for liability for potential accrued damages in an amount equivalent to the cost to replace each water wells within a 300-foot radius of the site. The rebuttable presumption is that the cost per well is a minimum of \$10,000.

3. Roads. Operations that impact borough roads must be conducted in accordance with the requirements and remedies of KPB Chapter 14.40.

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

5. Hours of operation. Material extraction activities, including equipment operation, may only occur between the hours of 6:00 a.m. and 9:00 p.m. Alaska Standard Time (AKST), or as determined by the planning

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commission or planning director, as applicable, to be appropriate based on information presented.

- a. *Seasonal, project-based waiver.* An applicant may request a seasonal, project-based waiver of the hours of operation requirements under this subsection. A waiver granted under this subsection is valid for six consecutive calendar months. To grant a waiver under this subsection, the commission must find that the waiver is necessary for a specific project, and that the waiver is not harmful to the public health, safety, and general welfare of borough residents.
6. *Groundwater elevation.* All material sites must maintain one monitoring well four feet below the proposed excavation per ten acres of excavated area.
7. *Setback.* Material site excavation areas must be 250 feet from the property boundaries of any **[local option zoning district,]** existing public school ground, private school ground, college campus, childcare facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation must be in addition to the 250-foot setback.
8. *Permit boundaries.* The buffers and any easements or right-of-way abutting the proposed permit area must be staked at sequentially visible intervals. Field verification and staking will require the services of a professional land surveyor. Stakes must be in place prior to issuance of the permit.
9. *Processing.* Material extraction of any size that includes processing, screening, or crushing activities is prohibited unless the applicant is issued an Earth Materials Processing CLUP and the conditions set forth in KPB 21.29.055 are imposed on the permit.
- B. *Discretionary Conditions.* The planning commission or planning director, as applicable, may set conditions of approval for issuance of a counter permit or CLUP, as appropriate for the area in which the development is sited, for the following:
  1. *Setbacks/Buffer Area.*

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Re: Administrative Amendment #5

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- a. The mandatory buffer area condition in subsection (A) above may be increased, up to a maximum of 100 feet between the area of excavation and the parcel boundaries, if the planning commission finds based on substantial evidence presented that increasing the buffer area is necessary for the public health, welfare and safety of the surrounding community;
    - i. Upon request of the applicant, in lieu of any additional buffer area under this subsection designed to separate the use of material site activities from neighboring parcel boundaries, an eight-foot-high berm above the preexisting elevation may be constructed, prior to excavation, around the excavation area. If the excavation site area expands, the berm may move toward the permitted boundary until such limits of the permitted area are exhausted. The berm must be maintained at eight-foot height while permitted activity is occurring.
  - b. All other requirements of KPB 21.29.050(A)(1) apply; and
  - c. When a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required.
2. Road maintenance and repair. In consultation with the Road Service Area Director, road maintenance or repair of public right-of-way haul routes may be required of the permittee.
3. Ingress and egress. The planning commission or planning director may determine the points of ingress and egress for the material site. The permittee is not required to construct haul routes outside the parcel boundaries of the material site. Driveway authorization must be acquired, from either the state through an "Approval to Construct" or the borough road service area, as appropriate, prior to issuance of a material site permit when accessing a public right-of-way.
4. Dust suppression. Dust suppression may be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on public right-of-way haul routes.
5. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8)(a).

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Re: Administrative Amendment #5

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6. *Street-level screening.* Street-level visual screening, noise mitigation, and lighting restrictions as appropriate for the surrounding area and in accordance with the standards set forth in KPB 21.29.040.

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**Thru:** Mike Navarre, Mayor *MN*  
Max Best, Chief of Staff *MB*

**FROM:** Robert Ruffner, Planning Director *RR*

**DATE:** October 13, 2022

**SUBJECT:** **Administrative Amendment #6** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.055, as follows:

21.29.055. Earth materials processing.

In accordance with KPB 21.29.020(B)(2), a n Earth Materials Processing CLUP is required for earth materials processing activities, such as material screening or crushing. Prior to issuing a permit under this subsection, the planning commission must impose the mandatory conditions set forth in KPB 21.29.050(A) and discretionary conditions as the planning commission deems appropriate. In addition, the following requirements and permit conditions specific to an Earth Materials Processing CLUP apply:

A. *Setback.* In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.

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B. Hours of operation.

1. Processing equipment may only be operated between 8:00 a.m. and 7:00 p.m. AKST, or as determined by the planning commission.
2. The planning commission may grant exceptions to increase the hours of operation and processing in the event of an emergency or a good-cause finding that the increased hours of operation serve a public purpose and are not harmful to the public health, safety, and general welfare of borough residents. Such an exception shall not exceed 120 days.
2. Seasonal, project-based waiver. An applicant may request a seasonal, project-based waiver of the hours of operation requirements under this section. A waiver granted under this subsection is valid for six consecutive calendar months. To grant a waiver under this subsection, the commission must find that the waiver is necessary for a specific project, and that the waiver is not harmful to the public health, safety, and general welfare of borough residents.

**C. Onsite retention of settling pond water is allowed, including for the washing of materials, provided that the settling pond is not created by channeling or redirecting natural water bodies or natural drainage. However, if the settling pond is within four feet of the seasonal high water table, then an earth materials extraction within water table CLUP under KPB 21.29.057 is also required.**

Your consideration of this amendment is appreciated.



# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**Thru:** Mike Navarre, Mayor *MN*  
Max Best, Chief of Staff *MB*

**FROM:** Robert Ruffner, Planning Director *RR*

**DATE:** October 13, 2022

**SUBJECT:** **Administrative Amendment #7** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.060, as follows:

21.29.060. Reclamation plan.

- A. All material site permit applications require an overall reclamation plan. A site plan for reclamation must be required including a scaled drawing with finished contours. A five-year reclamation plan must be submitted with a permit renewal request.
- B. The applicant may revegetate and must reclaim all disturbed land within the time period approved with the reclamation plan so as to leave the land in a stable condition wherein a 2:1 slope is maintained. Any revegetation must be done with a non-invasive plant species. Bonding must be required at \$750.00 per acre for all acreage included in the current five-year reclamation plan. In the alternative, the planning director may accept a qualified professional's estimate for determining the amount of bonding. If the applicant is bonded with the state, the borough's bonding requirement is waived. Compliance with reclamation plans will be enforced under KPB 21.50.

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C. The following measures must be considered in the preparation, approval and implementation of the reclamation plan, although not all will be applicable to every reclamation plan:

1. The area will be backfilled, graded and re-contoured using strippings, overburden, and topsoil so that it will be stabilized to a condition that will allow for revegetation under KPB 21.29.060(B).
2. The topsoil used for reclamation must be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by an independent, professional civil engineer licensed and active in the State of Alaska.
3. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation must be removed from the site, buried or burned. Topsoil and other organics will be spread on the backfilled surface to inhibit erosion and promote natural revegetation.
4. Topsoil mine operations must ensure a minimum of four inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).
5. Ponding may be used as a reclamation method as approved by the planning commission.
6. The area will be reclaimed in a manner that screens the site from becoming a public attractive nuisance and in a manner that is not harmful to public health, safety, and general welfare.

D. The five-year reclamation plan must describe the total acreage to be reclaimed relative to the total excavation plan. **The five-year reclamation plan must also identify any drainage features which enter or exit the property.**

E. Close-out. Reclamation plans and requirements survive expiration, termination, or revocation of a permit granted under this chapter. In order to close-out a permit, the planning director must be provided adequate proof that reclamation has been conducted in accordance with the reclamation plan. If a permit expires, terminates, or is revoked prior to permit close-out, the remedies under KPB 21.50 apply and the planning director

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Re: Administrative Amendment #7

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may hold applicable fines and remedies in abeyance upon a finding that  
reclamation is actively ongoing.

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**Thru:** Mike Navarre, Mayor *MN*  
Max Best, Chief of Staff *MB*

**FROM:** Robert Ruffner, Planning Director *RR*

**DATE:** October 13, 2022

**SUBJECT:** **Administrative Amendment #8** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.120, as follows:

21.29.120. Prior-existing uses.

- A. Determination. Prior-existing uses (PEU) in effect on October 1, 2022 are allowed to continue operation subject to the requirements of this section. The burden of proof that the prior-existing use existed before October 1, 2022 is on the applicant. If the planning director denies prior-existing use status, the applicant must comply with the permit requirements of this chapter. Failure to apply for a prior-existing use determination by January 1, 2024 will result in termination of all rights to continued operation as a nonconforming use and require full compliance with all provisions of this chapter.
- B. Decision. The planning director will give notice of the application for a prior-existing use determination to property owners within 100 feet of the subject parcel boundaries. The notice shall include a summary of the application, a vicinity map, and a deadline for submitting written comments or evidence regarding the existence of the use prior to the planning director issuing a decision. The planning director will issue a decision regarding the prior-existing use status based on the written application, written

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Re: Administrative Amendment #8

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comments, or evidence regarding the existence of the use. **Based on that information, the planning director will classify the PEU based upon the types defined in KPB 21.29.020 and will provide a written description of the existing operations. The planning director's decision will also set forth the reclamation plan as required by subsection (F) below.** The planning director's decision may be appealed by the applicant or affected property owners to the planning commission within 15 days of distribution of the decision.

- C. Discontinuance. Any prior-existing use which has ceased by discontinuance for an uninterrupted period of ~~[365 days]~~ **five (5) years** must thereafter conform to the permit requirements of this chapter. Lack of intent to cease use or abandon the use does not suspend the 365-day time period. If a prior-existing use is discontinued or abandoned, it may not be recommenced.
- D. Expansion Prohibited. A prior-existing use may not be increased, intensified, or expanded or moved to any other part of the lot, tract, or parcel it occupies after October 1, 2022, nor may the prior-existing use be moved to a parcel which is subject to this chapter. If a parcel is subdivided, the pre-existing use may not be expanded to any lot, tract, or parcel where material extraction or processing had not previously occurred or was not lawfully established in accordance with this section. **If a PEU material site has been exhausted as determined by the planning director, it cannot be used for earth materials processing without an earth materials processing CLUP.**
- E. Standards. In order to qualify as a legal prior-existing use, the use must meet the following standards, on or before October 1, 2022:
  - 1. A use must have been legally established under prior law.
  - 2. A use must be operational in accordance with the type of use.
- F. In accordance with 21.29.015, on or before January 1, 2026, all legal prior-existing-use extraction operations shall comply with KPB 21.29.060 (reclamation plan) and applicable hours of operation requirements under this chapter. **The planning director may waive or modify any or all of the reclamation plan requirements set forth in KPB 21.29.060 as appropriate.**
- G. Materials extraction operations with legal prior-existing use status which extract material below or within four feet of the seasonal highwater table shall conduct operations in accordance with the requirements outlined in KPB 21.29.057, except that KPB 21.29.057(C)(7) will not apply.

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Re: Administrative Amendment #8

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H. For the purposes of this section, "increased, intensified, or expanded" means: (1) enlarging the area of excavation **beyond the classification set forth in the planning director's decision or beyond the written description of existing operations as set forth by the planning director under subsection (B) above;** (2) increasing the depth of excavation to go within four feet of the seasonal high-water table; or (3) adding a use that was not in existence as of the date of the PEU status determination, to include adding earth materials processing to a use that did not previously include processing.

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**Thru:** Mike Navarre, Mayor *MN*  
Max Best, Chief of Staff *MB*

**FROM:** Robert Ruffner, Planning Director *RR*

**DATE:** October 13, 2022

**SUBJECT:** **Administrative Amendment #9** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.130, as follows:

### 21.29.130. Definitions.

A. Unless the context requires otherwise, the following definitions apply to material site permits and activities:

1. Abandon means to cease or discontinue a use without intent to resume, but excluding short-term interruptions to use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility or during normal periods of vacation or seasonal closure. An "intent to resume" can be shown through continuous operation of a portion of the facility, maintenance of utilities, or outside proof of continuance, e.g., bills of lading or delivery records. Abandonment also means the cessation of use, regardless of voluntariness, for a specified period of time.
2. Aggrieved Party means a party of record adversely impacted by the decision of the hearing officer who participated before the hearing officer either by written or oral presentation.

3. Aquifer means a subsurface formation that contains sufficient water-saturated permeable material to yield economical quantities of water to wells and springs.
4. Aquifer-confining layer means that layer of relatively impermeable soil below an aquifer, typically clay, which confines water.
5. Commercial means any provision of services, sale of goods, or use operated for production of income whether or not income is derived, including sales, barter, rental, or trade of goods and services.
6. Conditioning or processing material means a value-added process including batch plants, asphalt plants, screening, **blasting**, washing, and crushing by use of machinery. **It does not include stripping and segregation with excavation equipment.**
7. Exhausted means that all material of a commercial quality in a sand, gravel, or material site has been removed.
8. Groundwater means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.
9. Person shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.
10. Quarter or Quarterly means January through March, April through June, July through September, or October through December;
11. Sand, gravel or material site means an area used for extracting, quarrying, or conditioning gravel or substances from the ground that are not subject to permits through the state location (mining claim) system (e.g., gold, silver, and other metals), nor energy minerals including but not limited to coal, oil, and gas.
12. Seasonal high groundwater table means the highest level to which the groundwater rises on an annual basis.
13. Stable condition means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes.
14. Surface water means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.
15. Topsoil means material suitable for vegetative growth.
16. Waterbody means any lake, pond, stream, riparian wetland, or groundwater into which stormwater runoff is directed.



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October 13, 2022  
Re: Administrative Amendment #9

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

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Brent Johnson, Assembly Presider BJ

**DATE:** October 25, 2022

**SUBJECT:** **LAYDOWN Johnson Amendment #1** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.25.050, as follows:

21.25.050. Permit considerations—Public hearing required.

Within 30 days of receiving an application, the planning director or designee shall review the submitted application for completeness and compliance with this chapter. If it is incomplete or does not meet the requirements of this chapter, the planning director shall notify the applicant in writing. The planning director shall thereafter either return the application to the applicant or schedule the application to be considered by the planning commission at the next appropriate scheduled meeting. **Upon receiving an application, the planning director or designee will forward a copy of the application to the Kachemak Bay National Estuarine Research Reserve ("KBNERR") for review and comment. KBNERR will have thirty days to provide its review and comment prior to submission of the application to the planning commission if the application is otherwise complete.**

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

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

**DATE:** October 25, 2022

**SUBJECT:** **LAYDOWN Johnson Amendment #2** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.005, as follows:

21.29.005. Intent and Purpose.

The purpose of this chapter is to provide a land use permitting process to regulate the operation, scope, and duration of earth materials extraction and processing within the borough while promoting the public health, safety, and general welfare of the Kenai Peninsula Borough, **including the health of aquatic systems that support salmon.** It is the further purpose of this chapter to promote compatible, orderly development.

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

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

**DATE:** October 25, 2022

**SUBJECT:** **LAYDOWN Johnson Amendment #3** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.030, as follows:

21.29.030. Application procedure.

A. In order to obtain a counter permit or CLUP under this chapter, an applicant must first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application must include the following items, without which the application will be deemed incomplete:

1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
2. Expected life span of the material site;
3. A buffer plan consistent with KPB 21.29.050(A)(1);
4. Reclamation plan consistent with KPB 21.29.060;
5. The depth of excavation;

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Re: LAYDOWN Johnson Amendment #3

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6. Type of material to be extracted;
7. A site map professional surveyor licensed in the State of Alaska to include the following:
  - a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
  - b. Proposed buffers consistent with KPB 21.29.050(A)(1), or alternate buffer plan;
  - c. Identification of all encumbrances, including but not limited to, easements;
  - d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to submitting the application;
  - e. Anticipated haul routes, contingent on approval from the governmental agency with regulatory jurisdiction over the road;
  - f. Location of any processing areas on the parcel, if applicable;
  - g. North arrow;
  - h. The scale to which the site plan is drawn;
  - i. Preparer's name and date; and
  - j. Field verification must include staking the boundary of the parcel at sequentially visible intervals. The planning director may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious or staking is unnecessary.
8. A site plan, prepared by a qualified independent civil engineer licensed and active in the State of Alaska to include the following:
  - a. Surface water protection measures, if any, for adjacent properties, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;
  - b. Location and elevation of test holes, and depth of groundwater, based on the seasonal high-water table. At least one test hole per ten acres of excavated area is required to be dug. The test holes must be at least four feet below the proposed lowest elevation of excavation depth;
  - c. Location of all private wells of adjacent property owners within 300 feet of the proposed parcel boundary; and
  - d. Location of any water body on the parcel, including the location of any riparian wetland as determined by best available data **[1]** ;

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Re: LAYDOWN Johnson Amendment #3

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- e. Ground water protection measures for anadromous streams, especially with regard to juvenile salmon, as identified by shallow groundwater flowpaths and critical areas of aquifer connectivity, such as recharge, where this information is available.**
- 9. A statement by the operator of the site that the requirements of KPB 21.29.045 have been satisfied.
- B. In order to aid the planning commission or planning director's decision-making process, the planning director may provide vicinity, aerial, land use, and ownership maps for each application and may include additional information.

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Brent Johnson, Assembly Presiden BJ

**DATE:** October 25, 2022

**SUBJECT:** **LAYDOWN Johnson Amendment #4** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.040, as follows:

21.29.040. Standards for sand, gravel or material sites.

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise and other impacts of earth materials extraction to properties in the vicinity through setbacks, buffer zones, ~~[and]~~ street-level visual screening ~~[:]~~ **and protection of salmon-rearing waters.** Prior to granting a counter permit or conditional land use permit under this chapter, the planning director or planning commission, as applicable, must make the following findings:

1. That the use is not inconsistent with the applicable comprehensive plan;
2. That the use will not be harmful to the public's health, safety, ~~[and]~~ general welfare ~~[:]~~ **and the health of anadromous streams, particularly with regard to juvenile salmon;**
3. That sufficient setbacks, buffer zones, and other safeguards **such as avoidance of critical groundwater flowpaths and recharge areas** are being provided consistent with this chapter; and

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October 25, 2022  
Re: LAYDOWN Johnson Amendment #4

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4. That the use provides for a reclamation plan consistent with this chapter.

Your consideration of this amendment is appreciated.



# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

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

**DATE:** October 25, 2022

**SUBJECT:** **LAYDOWN Johnson Amendment #5** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.050, as follows:

21.29.050. Permit conditions applicable to all permits.

B. Discretionary Conditions. The planning commission or planning director, as applicable, may set conditions of approval for issuance of a counter permit or CLUP, as appropriate for the area in which the development is sited, for the following:

1. Setbacks/Buffer Area.

a. The mandatory buffer area condition in subsection (A) above may be increased, up to a maximum of 100 feet between the area of excavation and the parcel boundaries if the planning commission finds based on substantial evidence presented that increasing the buffer area is necessary for the public health, welfare and safety of the surrounding community;

i. Upon request of the applicant, in lieu of any additional buffer area under this subsection designed to separate the use of material site activities from neighboring parcel boundaries, an eight-foot-high berm above the preexisting elevation may be constructed, prior to excavation, around the excavation area. If the excavation site

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Re: LAYDOWN Johnson Amendment #5

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area expands, the berm may move toward the permitted boundary until such limits of the permitted area are exhausted. The berm must be maintained at eight-foot height while permitted activity is occurring.

- b. All other requirements of KPB 21.29.050(A)(1) apply; and
- c. When a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required.
- 2. Road maintenance and repair. In consultation with the Road Service Area Director, road maintenance or repair of public right-of-way haul routes may be required of the permittee.
- 3. Ingress and egress. The planning commission or planning director may determine the points of ingress and egress for the material site. The permittee is not required to construct haul routes outside the parcel boundaries of the material site. Driveway authorization must be acquired, from either the state through an "Approval to Construct" or the borough road service area, as appropriate, prior to issuance of a material site permit when accessing a public right-of-way.
- 4. Dust suppression. Dust suppression may be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on public right-of-way haul routes.
- 5. Surface water **and groundwater** protection. Use of surface **and ground** water protection measures as specified in KPB 21.29.030(A)(8)(a).
- 6. Street-level screening. Street-level visual screening, noise mitigation, and lighting restrictions as appropriate for the surrounding area and in accordance with the standards set forth in KPB 21.29.040.

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

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

**DATE:** October 25, 2022

**SUBJECT:** **LAYDOWN Johnson Amendment #6** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.057, as follows:

21.29.057(A). Material extraction below or within four feet of the seasonal high-water table.

In accordance with KPB 21.29.020(B)(3), a CLUP is required for material extraction of material below or within four feet of the seasonal high water table. Prior to a permit being issued the planning commission must impose the mandatory conditions set forth in KPB 21.29.050(A) and discretionary conditions as deemed appropriate. In accordance with KPB 21.29.050(A)(2)(b) dewatering is prohibited. The following additional application requirements and permit conditions specific to a Material Extraction within the Water Table CLUP apply:

- A. Prior to application for a water table extraction permit, the following requirements must be met:
1. Installation of a sufficient number of monitoring wells and test pits, as recommended by a qualified professional, to adequately determine groundwater flow direction, hydraulic gradient, water table and seasonal high-water table elevation Monitoring well and test pit locations must provide the qualified professional with adequate information to characterize the entire property that will be permitted for material extraction. Well casing elevations must be surveyed to a

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Re: LAYDOWN Johnson Amendment #6

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- vertical accuracy of 0.01 feet by a registered land surveyor and tied to NAVD 1988.
2. Determination of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient, and water table elevation for the site must be measured under the supervision of a qualified professional.
  3. A written report must be completed by a qualified professional that makes a determination about the potential adverse effects to groundwater and surface water body elevation, groundwater and surface water quality, surrounding water users and adjacent properties. The determination must be based on available data, interpretations of the data and knowledge of groundwater processes.
  4. The report must be submitted with the CLUP application and must:
    - a. Identify existing public water system sources (i.e., wells, springs, surface water intakes), as identified by the state, that are located within one-half mile of the boundary of the property on which the activity will take place;
    - b. Identify actual or presumed private drinking water wells located within one-half mile of the boundary of the property on which the activity will take place and include a copy of the available well logs;
    - c. Identify existing regulated potential sources of contamination within at least one-half mile of the boundary of the property on which the activity will take place;
    - d. Contain maps at appropriate scales presenting the results of the well search, the setbacks required by subsection (C)(7) of this section, and illustrating wetlands and water bodies; at least one map must show identified potential sources of contamination;
    - e. Include the water table elevation monitoring data, monitoring well logs and records of any test pits, and a discussion of the seasonal high-water table determination;
    - f. Evaluate subsurface hydrologic conditions and identify potential adverse effects that may occur as a result of material extraction. The evaluation of the hydrologic conditions must include identifying confining layers **and shallow ground water flowpaths.**

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

**TO:** Members, Kenai Peninsula Borough Assembly

**FROM:** Brent Johnson, Assembly President BJ  
Lane Chesley, Assembly Member (B)

**DATE:** July 28, 2022

**RE:** Ordinance 2022-36, Amending KPB Chapter 21.25 and KPB Chapter 21.29 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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In 2021, the Borough administration brought the issue of land use conflicts related to earth material extraction and processing sites back before the Assembly and requested Assembly consideration and action to address the regulatory process related to conditional land use permits issued under KPB Chapter 21.29, Material sites.

After receiving public comment on Ordinance 2021-41, the Assembly ultimately tabled the ordinance and a related substitute ordinance. The Assembly formed a committee of the whole to review the permitting process with a fresh perspective.

This ordinance will repeal and re-enact KPB Chapter 21.29. This ordinance shifts the conditional land use permit (CLUP) process for earth materials extraction and processing away from a "one size fits all" approach and instead establish a multi-permit structure wherein activities related to materials processing and extraction within the water table require heightened protections for the public good but activities of lesser impact to surrounding properties do not require the same level of protections. This ordinance maintains important mandatory conditions found in current code that are necessary to protect the public health, safety, and general welfare of Borough residents. This ordinance also presents a permitting system that will provide for more flexibility to meet the needs of the particular application through discretionary conditions that may only apply when appropriate under the circumstances.

Your consideration of the ordinance is appreciated.

# Kenai Peninsula Borough

## Legal Department

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### MEMORANDUM

**TO:** Brent Johnson, Assembly President  
Members, Kenai Peninsula Borough Assembly  
Blair Martin, Planning Commission Chair  
Members, Kenai Peninsula Borough Planning Commission

**FROM:** Robert Ruffner, Planning Director  
Sean Kelley, Borough Attorney  
A. Walker Steinhage, Deputy Borough Attorney

**COPY:** Charlie Pierce, Mayor

**DATE:** August 30, 2022

**SUBJECT:** Ordinance 2022-36: Sectional Analysis

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The following provides a sectional analysis for Ordinance 02022-36, An Ordinance Amending KPB Chapter 21.25 and KPB Chapter 21.29 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permit Conditions ("Ordinance 02022-36").

The purpose of this Sectional Analysis is to provide an easy reference to compare present KPB code with Ordinance 02022-36. Ideally it will supplement and cement the presentation to the Committee of the Whole on August 23, 2022. For the quickest summation of the changes proposed in Ordinance 02022-06, simply refer to the final column, "Highlighted Changes".

Finally, many of the features in Ordinance 02022-36—especially dimensional or durational descriptions like the 365-day period for prior-existing use abandonment—are intended to act as "springboards" for Assembly legislative policy decisions.

#### **ORDINANCE 02022-36 SECTIONAL ANALYSIS**

Code Section	O2022-36	Current Code	Highlighted Changes
KPB 21.25.050	30-day staff review period of an application.	21-day staff review period of an application.	Increase from 21 to 30 days.
KPB 21.25.060 - Notice	Notice published on KPB website; public bulletin; mailed to all owners/leaseholders within ½ mile radius of proposed site.	Requires notice published two times in newspaper, posted in the post office, copy of the notice sent by regular mail to all owners	Expressly does not apply to counter permits.  No longer requires newspaper publication but allows

		and/or leaseholders within one-half mile.	for publication on KPB website.
<b>KPB 21.29.005 - Intent and Purpose</b>	Establishes an intent and purpose section for KPB Chapter 21.29 with focus on public health, safety and general welfare, and to promote compatible, orderly development.	N/A	New code section.
<b>KPB 21.29.010 - Applicability</b>	<p><b>A.</b> Applies to all private and public lands, except as preempted by other law;</p> <p><b>B.</b> Does not apply within the incorporated cities;</p> <p><b>C.</b> Prohibits extraction within 300 feet of riparian wetlands and naturally-occurring open water bodies;</p> <p><b>D.</b> Operations must be conducted in accordance with current Alaska DEC Manual for extraction projects.</p>	N/A	New code section to clarify applicability of chapter and fact that it does apply to both public and private lands outside of the incorporated cities unless otherwise exempt.
<b>KPB 21.29.015 -Material extraction exempt from obtaining a permit</b>	<p><b>A.</b> Exempts extraction disturbing less than one acre if:  -Not in floodplain;  -Does not enter water table; and  -Does not cross property boundaries.</p> <p>No excavation within 32' of lot line.</p> <p><b>B.</b> Exempts dewatered bars within SBCFSA/Snow River.</p>	<p>Currently 21.29.010</p> <p><b>A.</b> Exempts extraction disturbing less than one acre if:  -Not in floodplain;  -Does not enter water table; and  -Does not cross property boundaries.</p> <p>No excavation within 20 feet of ROW or 10 feet of lot line.</p> <p><b>B.</b> Exempts dewatered bars within SBCFSA/</p>	<p>New code section.</p> <p>No excavation within 32' of lot lines.</p> <p>PEUs exempt but must provide reclamation plan &amp; comply with buffer zone requirements by 2026.</p>

	<p><b>C.</b> Exempts PEUs but by 2026 must:</p> <ul style="list-style-type: none"> <li>-Provide reclamation plan</li> <li>-Comply with buffer zone requirements</li> </ul>	<p>Snow River.</p> <p><b>C.</b> PEUs exempt but floodplain permit required within mapped special flood hazard area.</p>	
<p><b>KPB 21.29.020-Types of permits available</b></p>	<p><b>Counter permit</b></p> <ul style="list-style-type: none"> <li>-1 to 10 acres</li> <li>-No processing</li> <li>-No water table extraction</li> <li>-Only 21.29.050 conditions apply.</li> </ul> <p><b>Earth Materials Extraction CLUP</b></p> <ul style="list-style-type: none"> <li>-Activity disturbing more than 10 acres</li> <li>-No processing</li> <li>-No water table extraction</li> <li>-Only 21.29.050 conditions apply</li> </ul> <p><b>Earth Materials Processing CLUP</b></p> <ul style="list-style-type: none"> <li>-Required for all on-site processing, screening, or crushing</li> <li>-21.29.050 and 21.29.055 conditions apply</li> </ul> <p><b>Earth Materials Extraction within Water Table CLUP</b></p> <ul style="list-style-type: none"> <li>-Required for all earth materials extraction within water table</li> <li>-21.29.050 and 21.29.057 conditions apply</li> </ul>	<p>Counter permit and generic CLUP only.</p> <p>CLUP application requires all mandatory conditions and covers all uses.</p>	<p>Counter permit and three types of CLUPs.</p> <p>1 to 10 acres eligible for counter permit if no processing or water table extraction.</p> <p>Three different CLUP categories: earth materials extraction (more than ten acres), earth materials processing, and earth materials extraction within water table.</p> <p>Applicant may apply for one, two, or all three CLUP types.</p>
<p><b>KPB 21.29.030-Application procedure</b></p>	<p>Very similar to current procedure. Requires site map from professional surveyor and site plan</p>	<ul style="list-style-type: none"> <li>-Legal description</li> <li>-Life span</li> <li>-Buffer plan</li> <li>-Reclamation plan</li> </ul>	<p>Breaks apart site map (professional surveyor)</p>



	from professional engineer	-Excavation depth -Type of materials and equipment -Any voluntary permit conditions -Site plan	from site plan (professional engineer)  Application will be deemed incomplete without all items listed. (Not in current code.)
<b>KPB 21.29.040- Standards for sand, gravel or material sites</b>	Planning Director (counter permits) or Planning Commission (CLUPs) must find:  -Use is not inconsistent with applicable comp plan -Use will not be harmful to public's health, safety and general welfare -Provides sufficient setbacks, buffer zones, and other safeguards -Reclamation plan	-Protects against lowering of water sources serving other properties and damage to other properties -Minimizes off-site dust movement, noise disturbance, visual impacts & alternate post-mining land uses	All new standards/"may issue"  Focus on legitimate public purpose to protect against damage to public roads and adjacent properties as well as dust, noise and other impacts through setbacks, buffer zones, and street-level visual screening.
<b>KPB 21.29.045</b>	Applicants required to demonstrate compliance with state and federal law through written documentation from pertinent authorities: -Mining license (AK Dep't of Revenue) -Mining permit (ADNR) -Permits and plans required by DEC -Permits from USACE, if applicable -Other applicable permits from other regulatory bodies authorized to regulate mining activities or earth materials extraction  Must comply with other regulations such as air	N/A	New code section.  Requires compliance with applicable state/federal agencies prior to approval of KPB permit.  All activity must comply with state/federal regulations governing air/water quality and hazardous materials.  Violations subject to enforcement under 21.50.

	and water quality, and hazardous materials		
	Violations subject to enforcement under 21.50		
<b>KPB 21.29.050</b>	<p><b>NINE MANDATORY CONDITIONS</b></p> <p><b>1. Buffers:</b> 32-foot buffer/may include natural vegetation for street-level visual and noise screening; 8-foot fence or berm with a 2:1 slope; 2:1 slope between buffer zone and floor on all inactive site walls. Material from slope may be removed if site plan provides removal timeframe and verification material will be replaced within 30 days.</p> <p><b>2. Water source separation:</b> No extraction below or within 4' of seasonal high-water table unless new section 21.29.057 conditions are met (Material Extraction within Water Table CLUP/see below); no off-site dewatering; no extraction within 100 feet of private well.</p> <p><b>3. Roads:</b> Operations impacting KPB roads must comply with 14.40 and subject to remedies in 14.40.</p> <p><b>4. Dust control:</b> Water or calcium chloride on haul</p>	<p><b>Buffers:</b> 50' of undisturbed natural vegetation, or 6' berm with at least 2:1 slope, or 6' fence. Material from slope may be removed if site plan provides removal timeframe and verification material will be replaced within 30 days. Planning Commission may waive where topography or placement of natural barriers make screening not feasible or unnecessary</p> <p><b>Water source separation:</b> No material extraction within 100 horizontal feet of any water source existing prior to permit issuance. Counter permits require four-foot vertical separation from seasonal high water table. CLUPs require two-foot vertical separation from seasonal high water table. No dewatering unless PC grants exemption.</p> <p><b>Roads:</b> Operations impacting KPB roads must comply with KPB 14.40.175 and subject to remedies in 14.40.</p>	<p>Allows flexibility to meet demands of a specific application vs. "one size fits all" of current code.</p> <p><b>Buffers:</b></p> <ul style="list-style-type: none"> <li>-Street-level noise and visual screening (as opposed to generic "noise and visual screening/impacts")</li> <li>-Decrease from 50' vegetation to 32'</li> <li>-Increase from 6' to 8' minimum</li> <li>-Decision-maker may waive if lot line is directly adjacent to another material site</li> </ul> <p><b>Water source separation:</b></p> <ul style="list-style-type: none"> <li>-Operations within water table governed by new section, 21.29.057 (see below) and require Material Extraction within Water Table CLUP</li> <li>-On site water movement permitted if qualified independent civil engineer provides statement under seal that dewatering will not lower any known water systems and applicant posts bond for potential accrued</li> </ul>

	<p>roads within boundaries of material site</p> <p><b>5. Hours of operation:</b> 6 am-9m but decision-maker may waive for specific seasonal project. Waiver valid for six consecutive months.</p> <p><b>6. Groundwater elevation:</b> Requires groundwater monitoring/one well 4' below proposed excavation per ten acres of excavated area.</p> <p><b>7. Setback:</b> 250' from LOZD/school/senior center/child care facility/etc.</p> <p><b>8. Boundaries:</b> Must stake buffers, ROWs, easements at visible intervals by professional land surveyor. Stakes must be placed prior to permit issuance.</p> <p><b>9. Processing:</b> Must comply with conditions in new section 21.29.055 (Earth Materials Processing CLUP/see below.)</p> <p><b>SIX DISCRETIONARY CONDITIONS</b></p> <p><b>1. Setbacks/Buffer Areas:</b> Up to maximum of 100' if PC finds based on substantial evidence that increase is necessary for</p>	<p><b>Dust control:</b> Water or calcium chloride on haul roads within boundaries of material site</p> <p><b>Hours of operation:</b> Rock crushing equipment shall not be operated between 10 pm and 6 am.</p> <p><b>Groundwater elevation:</b> See below.</p> <p><b>Setback:</b> Not addressed.</p> <p><b>Boundaries:</b> Staked at sequentially visible intervals where boundaries are within 300' of excavation perimeter. Verification and staking by professional land surveyor.</p> <p><b>Processing:</b> See below.</p> <p><b>No provision for discretionary conditions.</b></p>	<p>damages in amount equivalent to replace each water well within 300-foot radius of site. Rebuttable presumption is each well is minimum of \$10,000.</p> <p><b>Roads/Dust control:</b> Essentially the same.</p> <p><b>Hours of operation:</b> For all extraction activities, 6 am to 9 pm but decision-maker can waive or adjust for specific seasonal project for period of six consecutive months.</p> <p><b>Groundwater elevation:</b> Requires groundwater monitoring.</p> <p><b>Setback:</b> 250' from LOZD/school/senior center/child care facility/etc.</p> <p><b>Boundaries:</b> Stakes must be placed prior to permit issuance rather than time of application.</p> <p><b>Processing:</b> Requires compliance with new section 21.29.055 and Earth Materials Processing CLUP.</p>
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	<p>public health, welfare, and safety; potential for rolling berms instead.</p> <p><b>2. Road maintenance and repair:</b> Permittee may be required to maintain/repair damaged public roads; requires consultation with RSA Director.</p> <p><b>3. Ingress/egress:</b> Decision-maker may require driveway authorization.</p> <p><b>4. Dust suppression:</b> On public ROWs when natural precipitation inadequate to suppress dust generated by material site traffic.</p> <p><b>5. Surface water protection:</b> As specified in 21.29.030(A)(8)(a).</p> <p><b>6. Street-level screening:</b> Street-level visual screening, noise mitigation, &amp; lighting restrictions as appropriate for the surrounding area and in accordance with 21.29.040 standards set to protect against attractive nuisance issues.</p>		<p>Adds discretionary conditions:</p> <ul style="list-style-type: none"> <li>-Additional setbacks or rolling berms</li> <li>-Maintenance and repair of damaged public roads</li> <li>-Driveway authorization</li> <li>-Dust suppression on public ROWs</li> <li>-Surface water protections as set forth in 21.29.030(A)(8)(a)</li> <li>-Street-level screening as appropriate for surrounding area and to protect against attractive nuisances</li> </ul>
<b>KPB 21.29.055-Earth materials processing</b>	<p>In addition to mandatory conditions in 21.29.050(A).</p> <p><b>A.</b> Conditioning or processing equipment must be operated at</p>	<p>300' setback for conditioning or processing equipment.</p> <p>PC may waive or reduce in consideration of and in accordance with</p>	<p>New code section.</p> <p>PC may waive or reduce in consideration of and in accordance with existing uses of the</p>

	<p>least 300' from parcel boundaries. PC may waive or reduce distance requirement in consideration of and in accordance with existing uses of properties in the vicinity.</p> <p><b>B.</b> Hours of operation for processing equipment between 8am and 7pm or as PC determines.</p> <p>PC may also grant exceptions (not to exceed 120 days) for:</p> <ul style="list-style-type: none"> <li>-Emergencies</li> <li>-Good cause finding that increase serves public purpose and is not harmful to public health, safety, and general welfare</li> </ul> <p>Applicant may request waiver (not to exceed six consecutive months) for specific seasonal project. PC must also find waiver is not harmful to the public health, safety and general welfare.</p>	existing uses of adjacent property at the time.	<p>"properties in the vicinity". Present code is "adjacent property".</p> <p>Processing equipment may only be operated between 8am and 7pm, may be increased for emergencies, to serve a public purpose or for specific, seasonal project.</p>
<b>KPB 21.29.057- Material extraction in water table</b>	<p>In addition to mandatory conditions in 21.29.050(A).</p> <p>Dewatering prohibited (21.29.050(A)(2)(b)).</p> <p><b>A.</b> Applicant must meet the following requirements prior to applying:</p>	<p>Excavation within 300' horizontal feet of water source may be permitted based on:</p> <ul style="list-style-type: none"> <li>-No negative impact to quantity of an aquifer serving existing water sources;</li> <li>-Minimum of three water monitoring tubes or well casings to determine flow direction, flow rate,</li> </ul>	<p>New code section.</p> <p>In addition to 21.29.050 conditions, sets forth additional requirements and conditions primarily to protect water quantity.</p> <p>Qualified professional must be able to characterize entire</p>

	<p>1. Installation of sufficient monitoring wells and test pits to provide qualified professional with adequate information to characterize the entire property that will be permitted for excavation.</p> <p>2. Under the supervision of a qualified professional, measurement of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient and water table elevation.</p> <p>3. A qualified professional's report determining the potential adverse effects to groundwater and surface water body elevation and quality, surrounding water users and adjacent properties. Determination based upon available data, interpretations of data and knowledge of groundwater processes.</p> <p>4. Report must be submitted with CLUP application. Subsection lists what must be included in the report.</p> <p><b>B. Must also include:</b></p> <p>1. Description of proposed extent and depth of material extraction beneath</p>	<p>and water elevation; and</p> <p>-Quarterly measurements of groundwater elevation, flow direction, and flow rate for at least four quarters prior to application. Tubes or wells must be kept in place for duration of excavation in water table.</p> <p>-Operations shall not breach aquifer-confining layer. No extraction activities within 100 linear feet from waterbodies.</p> <p>Additional setback from lakes, rivers, anadromous streams and riparian wetlands may be required.</p> <p>-Permits may contain additional conditions addressing surface water diversion.</p>	<p>property permitted for excavation through sufficient monitoring wells and test pits.</p> <p>Qualified professional must supervise measurement of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient and water table elevation. Based upon available data, interpretations of data and knowledge of groundwater processes, qualified professional will report potential detrimental adverse effects to groundwater and surface water body elevation and quality, surrounding water users and adjacent properties. Must be submitted with application and also include extent and depth of extraction beneath seasonal high-water table, spill prevention/control/countermeasures plan.</p> <p>Conditions: -Implementation of monitoring and spill prevention/control/countermeasures plan;</p>
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	<p>seasonal high-water table.</p> <p>2. Report 21.29.057(A)(4) report, monitoring plan and spill prevention/control/countermeasures plan.</p> <p><b>C. Conditions</b></p> <p>1. Implement monitoring plan</p> <p>2. Implement spill prevention/control/countermeasures plan</p> <p>3. Monthly measurement (during active extraction) of groundwater flow direction, hydraulic gradient and groundwater table elevation</p> <p>4. Retain water elevation monitoring data for two years after completion of reclamation activities</p> <p>5. Annual report including water table elevation monitoring data from qualified professional</p> <p>6. Operations must not breach or extract material from a confined aquifer or a confining layer beneath a perched aquifer. Subsection sets forth what must be done if there is a breach.</p> <p>7. Setbacks:</p>		<p>-Monthly measurement of groundwater and retention of groundwater data for two years after completion of reclamation activities;</p> <p>-Annual report from qualified professional;</p> <p>-No breach or extraction from a confined aquifer or a confining layer beneath a perched aquifer; and</p> <p>-Setbacks from existing drinking water sources.</p>
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	<p>-500' from nearest down-gradient drinking water source</p> <p>-350' from nearest cross-gradient drinking water source</p> <p>-200' from nearest up-gradient drinking water source</p> <p>-Do not apply to drinking water sources constructed after permit issued</p>		
<b>KPB 21.29.060 -Reclamation plan</b>	<p><b>A.</b> Reclamation with site plan required. 5-year reclamation plan must be submitted with permit renewal request.</p> <p><b>B.</b> Applicant may re-vegetate and reclaim all disturbed land upon exhausting the material site or time determined by plan to leave land in a stable condition. 2:1 slope must be maintained. \$750 per acre bond required unless state bond. Enforcement under KPB 21.50.</p> <p><b>C.</b> Measures listed must be considered as part of every reclamation plan, 6 reclamation measures including ponding and protection against public nuisance.</p> <p><b>D.</b> Plan must list total acreage to be reclaimed.</p>	<p><b>A.</b> Reclamation Plan required.</p> <p><b>B.</b> Applicant shall vegetate and reclaim all disturbed land upon exhausting the material site or time determined by plan to leave land in a stable condition. Reclamation must occur for area exceeding 5 acres prior to 5 year renewal or as PC specifies.</p> <p><b>C.</b> Measures listed must be considered as part of every reclamation plan, 6 reclamation measures including ponding.</p> <p><b>D.</b> Plan must list total acreage to be reclaimed each year, a list of equipment and a time schedule for reclamation measures.</p>	<p>"May" rather than "shall" revegetate.</p> <p>Bonding required.</p> <p>Plan survives permit termination and must list total acreage to be reclaimed.</p> <p>Protection against public nuisance.</p>



	<b>E.</b> Close-out – reclamation survives permit expiration, termination or revocation.		
<b>KPB 21.29.065 -Effect of permit denial</b>	<p><b>A.</b> Applicant denied counter permit cannot reapply within same calendar year w/out new evidence or circumstances.</p> <p><b>B.</b> Applicant denied CLUP permit cannot reapply within same calendar year w/out new evidence or circumstances.</p> <p><b>C.</b> Applicant bears burden of proof.</p>	N/A	An applicant cannot immediately reapply for a permit after denial.
<b>KPB 21.29.070 -Permit renewal, modification and revocation</b>	<p><b>A.</b> Renewal by application every 5 years.</p> <p><b>B.</b> Administrative approval if compliance with all conditions, no modification and no violation in prior 2 years.</p> <p><b>C.</b> Public hearing on renewal required when there is a modification, permit violation, or as determined by planning director. Permit in compliance with no violations must be approved for renewal but the commission can add additional conditions where appropriate.</p>	<p><b>A.</b> Must request permit extension every 5 years, 30 days prior to expiration.</p> <p><b>B.</b> If no modification to operations or conditions proposed, a permit extension certificate may be issued by planning director.</p> <p><b>C.</b> Extension may be denied if: (1) not in compliance with reclamation requirements; (2) non-compliance with permit conditions; (3) permit violation in last 2 years and still in non-compliance.</p> <p><b>D.</b> Modification processed per</p>	<p>Renewal application, not request in writing.</p> <p>Possibility for public hearing on renewal and additional discretionary conditions on renewal.</p>

	<p><b>D.</b> Modifications processed per KPB 21.29.030 -.050</p> <p><b>E.</b> Renewal fee is same as original permit fee.</p> <p><b>F.</b> Failure to apply for renewal = permit expiration.</p> <p><b>G.</b> Permits revoked per KPB 21.50.</p>	<p>KPB 21.29.030-.050.</p> <p><b>E.</b> No fee for permit extensions approved by planning director. The fee for a permit modification processed under KPB 21.29.070(D) requires original permit fee.</p> <p><b>F.</b> Failure to apply for renewal = permit expiration.</p> <p><b>G.</b> Permits revoked per KPB 21.50.</p>	
<b>KPB 21.29.080 -Permit Close-out</b>	<p>Requires permittee to request close-out of permit and verification of reclamation compliance.</p> <p>Bonding released at close-out.</p>	<p>Current code section is titled "Permit Termination" and provides for a termination document and verification of site reclamation.</p>	<p>Terminology change from permit "termination" to "close-out". Explicit that reclamation requirement survives permit expiration or revocation &amp; that bonds are released upon close-out.</p>
<b>KPB 21.29.100 -Recordation</b>	<p>Provides for recordation of permits, etc. issued under KPB 21.29. Owner/operator responsible for cost.</p>	<p>Similar recordation requirement.</p>	<p>Owner/operator responsible for recording costs.</p>
<b>KPB 21.29.110 -Violations</b>	<p>Violations governed by KPB 21.50.</p>	<p>Same but also has subsection (B) which provides for bonding if owner/operator has 3 violations within a 3-year period.</p>	<p>Violations governed by KPB 21.50 remain unchanged. No subsection B related to bonding requirement if there are 3 violations in 3 year period.</p>
<b>KPB 21.29.115 -Permit transfers</b>	<p>Planning director approves or disapproves permit transfers. Permits do not run with the land.</p>	<p>N/A</p>	<p>New section of code.</p>

<p><b>KPB 21.29.120</b>  <b>-Prior-existing</b>  <b>uses</b></p>	<p><b>A.</b> Determination – mirrors process under KPB 21.44 (LOZD) for nonconforming-use determination</p> <p><b>B.</b> Director provides notice of application and issues decision. Decision can be appealed to the Planning Commission.</p> <p><b>C.</b> Establishes 365-day period for abandonment.</p> <p><b>D.</b> Prohibits increasing, intensifying, expanding or moving the use.</p> <p><b>E.</b> Establishes standards to guide decision-making process.</p> <p><b>F.</b> Requires PEU compliance with KPB 21.29 reclamation plan and hours of operation by January 1, 2026.</p> <p><b>G.</b> Requires PEU compliance with code requirements for extraction within water table under KPB 21.29.057, except the water source separation requirements do not apply.</p>	<p><b>A.</b> Requires determination that use as a material site commenced or operated after May 21, 1986 and prior to May 21, 1996. Limited subdivision rights. PEU runs with land.</p> <p><b>B.</b> Must have applied to be registered as a PEU prior to January 1, 2001.</p> <p><b>C.</b> Abandonment if no operation as a material site between 5/21/1996 and 5/21/2011. Owner may protest finding of abandonment and may appeal decision to the Planning Commission.</p>	<p>By 1/1/2026, PEUs required to come into compliance with:</p> <ul style="list-style-type: none"> <li>-Reclamation requirements;</li> <li>-Hours of operation; &amp;</li> <li>-Buffer area.</li> </ul> <p>365 period of nonuse/ no operations = Abandonment</p>
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# O2022-36

## Material site permitting process overview

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# Section 1

## KPB 21.25.050

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- Increased review time of application for permit from 21 days to 30 days.



# Section 2

## KPB 21.25.060

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- New notice section applicable to CLUPs
- Tracks Title 20 notice and maintains ½ mile notice radius.
- Provides for notice via borough website

## Section 3

# New Chapter KPB 21.29, Material Site Permits

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- Establishes a multi-permit stratification system intended to increase decision-making flexibility while protecting against uses with highest impacts on public health, safety, and general welfare.
- Four permit types
  - Counter Permit (CP): anything from over 1 acre to 10 acres, no processing, no extraction in water table.
  - 3 Conditional Land Use Permit (CLUP) types:
    - Earth Materials Extraction CLUP: extraction activity disturbs more than 10 acres, no processing, no extraction in water table.
    - Earth Materials Processing CLUP: required for all on-site processing, screening, or crushing.
    - Earth Materials Extraction within Water Table CLUP: provides for heightened protections for uses within water table.

# KPB Chapter 21.29

## (as proposed in O2022-36)

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- KPB 21.29.005 – Intent and Purpose
- KPB 21.29.010 – Applicability
- KPB 21.29.015 – Material extraction exempt
- KPB 21.29.020 – Types of permits available
- KPB 21.29.030 – Application procedure
- KPB 21.29.040 – Standards for sand, gravel or material sites
- KPB 21.29.045 – Required compliance with State/Federal laws
- KPB 21.29.050 – Permit conditions applicable to all permits
- KPB 21.29.055 – Earth materials processing
- KPB 21.29.057 – Material extraction in water table
- KPB 21.29.060 – Reclamation plan
- KPB 21.29.065 – Effect of permit denial
- KPB 21.29.070 – Permit renewal, modification, revocation
- KPB 21.29.080 – Permit close-out
- KPB 21.29.100 – Recordation
- KPB 21.29.110 – Violations
- KPB 21.29.115 – Permit transfers
- KPB 21.29.120 – Prior existing uses
- KPB 21.29.130 – Definitions



# Section 3

## KPB 21.29.005 – Intent and Purpose

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- Sets forth intent and purpose for chapter in borough code regulating material sites.
- General purpose:
  - Promotes the public health, safety, and general welfare of KPB residents and visitors.
  - Promotes compatible, orderly development.

# Section 3

## KPB 21.29.010 – Applicability

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- Chapter applies to all private and public lands in the borough, unless otherwise exempt by law.
- Does not apply within the incorporated cities.
  - Zoning powers have been delegated by the borough to all incorporated cities within the borough
- Prohibits earth materials extraction within 300 feet of riparian wetlands or naturally-occurring open water bodies.
- References State of Alaska, DEC Best Management Practices.

## Section 3

# KPB 21.29.015 – Material extraction exempt

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- Exempts extraction disturbing less than one acre under circumstances set out
- Exempts dewatered bars within SBCFSA
- PEUs exempt BUT
  - Requires that by 2026, a legally established PEU:
    - 1. Provide a reclamation plan per KPB 21.29.060
    - 2. come into compliance with buffer zone requirements under KPB 21.29.050(A)(1)
    - Note: KPB 21.29.120 also requires PEUs to come into compliance with hours of operation requirements – this Section could be amended to include that as well.



# Section 3

## KPB 21.29.020 – Types of permits available.

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- Current code: counter permit and CLUP. CLUP application requires all mandatory conditions and covers all uses.
- Proposed KPB 21.29.020 = 4 permit types
  - Counter Permit (CP): anything from over 1 acre to 10 acres, no processing, no extraction in water table. Only the conditions set forth in KPB 21.29.050 apply.
  - 3 Conditional Land Use Permit (CLUP) types:
    - Earth Materials Extraction CLUP: extraction activity disturbs more than 10 acres, no processing, no extraction in water table, only the conditions set forth in KPB 21.29.050 apply.
    - Earth Materials Processing CLUP: required for all on-site processing, screening, or crushing. Conditions set forth in KPB 21.29.050 + conditions set forth in KPB 21.29.055 apply.
    - Earth Materials Extraction within Water Table CLUP: Required for any earth materials extraction within water table. Conditions set forth in KPB 21.29.050 + conditions set forth in KPB 21.29.057 apply.
  - A CLUP applicant may request 1, 2 or all three CLUP types at the time of application.

## Section 3

# KPB 21.29.030 – Application procedure

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- Very similar to current code application procedure
- Breaks apart a site map (professional surveyor) from site plan (professional engineer)

## Section 3

### KPB 21.29.040 – Standards for sand, gravel or material sites

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- All new standards.
- Regulations serve legitimate public purpose to protect against damage of public roads, physical damage to adjacent properties, dust, noise and other impacts through setbacks, buffer zones, and street-level visual screening.
- In granting a permit the Planning Director or Planning Commission must find:
  - Use is not inconsistent with applicable comp plan.
  - Use will not be harmful to public's health, safety, and general welfare.
  - Sufficient setbacks, buffer zones, and other safeguards are provided.
  - Use provides for a reclamation plan.



## Section 3

# KPB 21.29.045 – Required compliance with State and Federal laws

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- Requires evidence of compliance with applicable state/federal agency prior to approval of KPB permit.
- Requires all activity conducted in manner that complies with state/federal protections including but not limited to air quality, water quality, hazardous materials.

## Section 3

# KPB 21.29.050 – Permit conditions applicable to all permits

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- In lieu of current exhaustive conditions in borough code that apply as a “one size fits all” this section establishes 2 mandatory conditions and provides 6 potentially applicable discretionary conditions.
- Allows for flexibility to meet the demands of a specific application.
- Is a move away from the “one size fits all” system.



# Section 3

## KPB 21.29.050 – Permit conditions

### ...Continued

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- 9 mandatory conditions:
  1. Buffer Zone: 32 feet, 8 foot berm or fence, 2:1 slope, buffer zone can only be waived when site is next to adjacent pit.
  2. Water source separation: extraction within water table is prohibited unless requirements of KPB 21.29.057 are met; dewatering off site is prohibited; material extraction within 100 feet of any private well is prohibited.
  3. Roads: Operations that impact KPB roads must be in accordance with KPB Chapter 14.40.
  4. Dust control: Dust suppression required within material site haul roads.
  5. Hours of operation: Applicable to all operations, 6am to 9pm, but can be adjusted by decision-maker and/or waived for seasonal project.
  6. Groundwater elevation: Requires monitoring of groundwater.
  7. Setback: 250 ft from LOZD, school, senior center, child care facility, etc.
  8. Permit boundaries: Must stake buffers, ROWs.
  9. Processing: Requires compliance with KPB 21.29.050 conditions and KPB 21.29.055.

## Section 3

### KPB 21.29.050 – Permit conditions

### ...Continued

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- 6 discretionary conditions:
  1. Setbacks/Buffer Areas: Up to a maximum of 100 feet based on circumstances, potential for “rolling berms”.
  2. Road maintenance and repair: Permittee may be required to maintain/repair damaged roads.
  3. Ingress/Egress: As determined by decision-makers, driveway authorization required.
  4. Dust Suppression: May be required on public ROWs.
  5. Surface water protection: Use of surface water protection measures specified in KPB 21.29.030(A)(8)(a).
  6. Street-level screening: Street-level visual screening, noise mitigation, and lighting restrictions as appropriate for the surrounding area and in accordance with the standards set forth in KPB 21.29.040 to protect against attractive nuisance issues.



## Section 3

# KPB 21.29.055 – Earth materials processing

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- In addition to KPB 21.29.050 conditions, this new Section sets forth 2 additional conditions:
  1. Setback – must process 300 feet from parcel boundaries, or lesser distance as appropriate.
  2. Hours of operation: 8am to 7pm, or as determined by the PC.
    - Provides for exceptions for emergency or good-cause findings.
    - Seasonal, project-based waiver available.

## Section 3

# KPB 21.29.057 – Material extraction in water table

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- In addition to KPB 21.29.050 conditions sets forth additional requirements & conditions aimed primarily at protecting water quantity:
  - 21.29.057(A): establishes 6 additional application requirements when applicant requests to extract within the water table.
    - Requires groundwater study and report from a professional to characterize and monitor the condition of groundwater at the permitted site. Elevations of groundwater will be tied to real-world elevation datum. Focuses on water quantity concern over water quality concerns
  - 21.29.057(C): establishes 7 additional conditions applicable when applicant requests to extract within the water table.
    - Setback: up to 500 feet setback required related to proximity to drinking water source.



## Section 3

### KPB 21.29.060 – Reclamation plan

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- Similar to current code. Requires reclamation plan. Must be submitted with renewal application as well.
- Requires reclamation of site to leave land in stable condition with 2:1 slopes and presumably revegetation.
- Requires \$750 per acre bond.
- Reclamation plan and bond survives close-out, expiration, termination or revocation of permit.

## Section 3

### KPB 21.29.065 - .115

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- KPB 21.29.065 – Effect of permit denial: no reapplication within 1 year without new evidence.
- KPB 21.29.070 – Permit renewal, modification, revocation: renewal required every 5 years, administrative if no changes, violations or complaints; public hearing otherwise.
- KPB 21.29.080 – Permit close-out: adds formal close-out process.
- KPB 21.29.100 – Recordation
- KPB 21.29.110 – Violations
- KPB 21.29.115 – Permit transfers: permits do not run with land, transfers must be approved.

## Section 3

# KPB 21.29.120 – Prior existing uses

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- Recognizes “grandfather” rights, also known as non-conforming uses or prior existing uses (PEU).
- Must apply for PEU status. Determination by Planning Director appealable to Planning Commission (similar to LOZD nonconforming use process).
- Abandonment after 365 days of non-use; expansion prohibited.
- MAJOR CHANGE - BY JANUARY 1, 2026 – PEU must:
  - Comply with KPB 21.29.060 (reclamation plan)
  - Comply with KPB 21.29.057 (extraction within water table)
  - Comply with applicable hours of operation requirements



# Issues that O2022-36 addresses to move the conversation forward

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- One Size Fits All = rigid, not flexible to meet needs of application
  - Exhaustive list of mandatory conditions, no discretionary conditions, no room for adjustment
- Clarifies standards, and private vs. public viewshed concerns
- Provides for heightened requirements, conditions and protective measures for uses that could have highest detrimental impact on public health, safety, and general welfare.
- Address PEU issues, provides for formal process to establish use and status; requires eventual compliance with reclamation plan, hours of operation, and extraction within water table.



### **21.29.010. Applicability.**

D. All operations must be conducted in accordance with the current publication of the State of Alaska, Alaska DEC User's Manual Best Management Practices for Gravel/Rock Aggregate Extraction Projects. In the event a provision of this chapter conflicts with the State of Alaska's manual, this chapter controls.

### **21.29.020. Types of permits available.**

B. Conditional land use permit. A conditional land use permit (CLUP) is required for the following types of earth material extraction or uses:

3. Earth Materials Extraction Within Water Table CLUP. An Earth Materials Extraction within Water Table CLUP is required for material extraction and operations of any size within four feet of the seasonal high-water table. The conditions set forth in KPB 21.29.050 plus the requirements and conditions set forth in KPB 21.29.057 for material extraction within four feet of the seasonal high-water table are applicable to this type of CLUP.

May want to define "water table" and how this level fluctuates. May also want to differentiate it from a "potentiometric water level", or the water level expressed by a "confined aquifer".

### **21.29.030. Application procedure.**

A. In order to obtain a counter permit or CLUP under this chapter, an applicant must first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application must include the following items, without which the application will be deemed incomplete:

8. A site plan, prepared by a qualified independent civil engineer licensed and active in the State of Alaska to include the following:

### **21.29.045. Required compliance with State and Federal laws**

A. All applicants for permits for earth materials extraction are required to demonstrate compliance with state and federal law. Prior to final approval of the permit, the applicant or agent must provide written documentation from the permitting agency of compliance with the following:

4. Notice of intent for construction general permit or multi-sector general permit and storm water pollution prevention plan, and other associated permits or plans required by the Department of Environmental Conservation (DEC) pursuant to the Alaska Pollutant Discharge Elimination System (APDES) requirements;

B. In addition to the requirements in subsection (A) of this section, all activity must be conducted in compliance with state or federal regulations governing the items listed below. Written documentation of compliance with these regulations is not required. Complaints received by the borough of violations of requirements within this section will be forwarded to the appropriate agency for enforcement, this includes but is not limited to:

2. Water quality. EPA or ADEC regulations controlling spills, spill reporting, storage and disposal of oil, anti-freeze and hydrocarbons.

C. Failure to comply with any of the requirements in subsections (A) and (B) of this section is a violation of the permit, and is subject to enforcement pursuant to KPB Chapter 21.50.

**21.29.050. Permit conditions applicable to all permits.**

- A. The planning commission or planning director, as applicable, must impose the following mandatory conditions prior to approval of a permit under this chapter:

2. Water source separation.

- a. Material extraction below or within four feet of the seasonal high-water table is prohibited unless the applicant is issued a CLUP Material Extraction Within Water Table Permit and the requirements and conditions set forth in KPB 21.29.057 are satisfied;
- b. Dewatering either by pumping, ditching or some other form of draining that removes water from the site or causes water to leave the site is prohibited;
- c. All permits shall be issued with a condition which prohibits any material extraction within 100 linear feet of any private well or water source existing prior to original permit issuance; and

Does this include PWS sources??

- d. On site movement of water may be permitted pursuant to KPB 21.29.057 and if: (i) the operator provides a statement under seal and supporting data from a qualified independent civil engineer licensed and active in the State of Alaska that the dewatering will not lower any known water systems; and (ii) the applicant posts a bond for liability for potential accrued damages in an amount equivalent to the cost to replace each water wells within a 300-foot radius of the site. The rebuttable presumption is that the cost per well is a minimum of \$10,000.

Re "...any known water systems..." - Does this include PWS sources?? If so, clarify.

6. Groundwater elevation. All material sites must maintain one monitoring well four feet below the proposed excavation per ten acres of excavated area.

Should this be clarified to mean one monitoring well in the same aquifer?

7. Setback. Material site excavation areas must be 250 feet from the property boundaries of any local option zoning district, existing public school ground, private school ground, college campus, childcare facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation must be in addition to the 250-foot setback.

- B. Discretionary Conditions. The planning commission or planning director, as applicable, may set conditions of approval for issuance of a counter permit or CLUP, as appropriate for the area in which the development is sited, for the following:

1. Setbacks/Buffer Area.

- a. The mandatory buffer area condition in subsection (A) above may be increased, up to a maximum of 100 feet between the area of excavation and the parcel boundaries, if the planning commission finds based on substantial evidence presented that increasing the buffer area is necessary for the public health, welfare and safety of the surrounding community;

5. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8)(a).

**21.29.057. Material extraction below or within four feet of the seasonal high-water table.**

In accordance with KPB 21.29.020(B)(3), a CLUP is required for material extraction of material below or within four feet of the seasonal high water table. Prior to a permit being issued the planning commission must impose the mandatory conditions set forth in KPB 21.29.050(A) and discretionary conditions as deemed appropriate. In accordance with KPB 21.29.050(A)(2)(b) dewatering is prohibited. The following additional application requirements and permit conditions specific to a Material Extraction within the Water Table CLUP apply:

A. Prior to application for a water table extraction permit, the following requirements must be met:

1. Installation of a sufficient number of monitoring wells and test pits, as recommended by a qualified professional, to adequately determine groundwater flow direction, hydraulic gradient, water table and seasonal high-water table elevation Monitoring well and test pit locations must provide the qualified professional with adequate information to characterize the entire property that will be permitted for material extraction. Well casing elevations must be surveyed to a vertical accuracy of 0.01 feet by a registered land surveyor and tied to NAVD 1988.

Seems to conflict with 21.29.050(A)(6) that says "...one monitoring well...per ten acres...". Perhaps add "at least" to 21.29.050(A)(6) and reference this section for more details.

2. Determination of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient, and water table elevation for the site must be measured under the supervision of a qualified professional.

3. A written report must be completed by a qualified professional that makes a determination about the potential adverse effects to groundwater and surface water body elevation, groundwater and surface water quality, surrounding water users and adjacent properties. The determination must be based on available data, interpretations of the data and knowledge of groundwater processes.

4. The report must be submitted with the CLUP application and must:

- a. Identify existing public water system sources (i.e., wells, springs, surface water intakes), as identified by the state, that are located within one-half mile of the boundary of the property on which the activity will take place;

- Recommend changing to "Identify where the property boundary on which the activity will take place intersects a public water system (PWS) Drinking Water Protection Area, as identified by the state."
- See interactive public web map, titled "Alaska DEC Drinking Water Protection Areas", at <https://www.arcgis.com/home/item.html?id=13ed2116e4094f9994775af9a62a1e85>.
- The link could be part of a supplemental fact sheet?

b. Identify actual or presumed private drinking water wells located within one-half mile of the boundary of the property on which the activity will take place and include a copy of the available well logs;

c. Identify existing regulated potential sources of contamination within at least one-half mile of the boundary of the property on which the activity will take place;

d. Contain maps at appropriate scales presenting the results of the well search, the setbacks required by subsection (C)(7) of this section, and illustrating wetlands and water bodies; at least one map must show identified potential sources of contamination;

e. Include the water table elevation monitoring data, monitoring well logs and records of any test pits, and a discussion of the seasonal high-water table determination; and

f. Evaluate subsurface hydrologic conditions and identify potential adverse effects that may occur as a result of material extraction. The evaluation of the hydrologic conditions must include identifying confining layers.

B. In addition to the application requirements for a CLUP for earth materials extraction, the application for a water table extraction permit must include:

1. A description of the proposed extent and depth of material extraction beneath the seasonal high-water table.

2. A written report that meets the requirements of subsection (A)(4) of this section, a monitoring plan, and a spill prevention, control, and countermeasures plan as required by this section.

C. Conditions. In addition to the requirements of KPB 21.29.050, operating conditions for extraction within or below four feet of the seasonal high-water table are as follows:

1. Implement a monitoring plan that meets the requirements of this chapter. If existing wells will provide sufficient data, no additional wells are required.

2. Implement the spill prevention, control and countermeasures plan in accordance with Environmental Protection Agency's requirements for above ground storage tank operations regardless of the quantity of petroleum products on site.

3. Groundwater flow direction, hydraulic gradient, and groundwater table elevation for the subject parcel must be measured at least monthly during active extraction. Monitoring wells must be maintained or replaced with equivalent monitoring wells.

4. Water elevation monitoring data must be retained for two years following completion of reclamation activities and must be provided to the planning director upon request.

5. A qualified professional must annually submit a report to the department that includes water table elevation monitoring data.

6. Operations must not breach or extract material from a confined aquifer or a confining layer beneath a perched aquifer.

Define "confined aquifer", "confining layer", and "perched aquifer".

a. If evidence suggests a confined aquifer or confining layer has been breached, or if groundwater or surface water elevation changes rapidly or beyond natural variation, the director must be notified within 24 hours.

i. A hydrologic assessment, conducted by a qualified professional, to determine the affected area and the nature and degree of effects and a description of potential repair or mitigation options must be submitted to the director within 14 calendar days of notification; and

ii. Repair or mitigation sufficient to address identified effects must be initiated as soon as practical, not to exceed 45 calendar days from the date the assessment is received by the director.

7. Operations must maintain the following setbacks:

- a. 500 feet from the nearest down-gradient drinking water source;
- b. 350 feet from the nearest cross-gradient drinking water source;
- c. 200 feet from the nearest up-gradient drinking water source; and
- d. Minimum separation distances do not apply to drinking water sources constructed after a permit to extract material below the water table has been issued.

**21.29.060. – Reclamation plan.**

E. **Close-out.** Reclamation plans and requirements survive expiration, termination, or revocation of a permit granted under this chapter. In order to close-out a permit, the planning director must be provided adequate proof that reclamation has been conducted in accordance with the reclamation plan. If a permit expires, terminates, or is revoked prior to permit close-out, the remedies under KPB 21.50 apply and the planning director may hold applicable fines and remedies in abeyance upon a finding that reclamation is actively ongoing.

Is this a good place to include requirements for decommissioning any monitoring wells? See Section 9.2.12 Well Decommissioning of the DEC Gravel Extraction BMP Manual, <https://dec.alaska.gov/water/wastewater/stormwater/gravel/>.



# TAKINGS OVERVIEW

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## INTRODUCTION



# TAKINGS OVERVIEW

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## BACKGROUND PRINCIPLES

# FEDERAL CONSTITUTION'S FIFTH AMENDMENT

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“Takings Clause” or  
“Just Compensation  
Clause”

- Gov’t cannot take “private property...for public use, without just compensation.”
  - Gov’t’s power to take property (or lesser interests in property) = “eminent domain”
    - Exercise of eminent domain also called “condemnation”
  - “Just compensation” has been interpreted to mean FMV for property taken
- **Fundamental principle: Avoid unfairly burdening some individuals with expense of accomplishing public purposes**



# ALASKA CONSTITUTION'S ARTICLE 1, SECTION 18

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- “Private property shall not be taken or damaged for public use without just compensation.”

# BACKGROUND PRINCIPLES

(CONT'D)

- A taking can only occur where a private property interest exists.
- People own property subject to government's reserved power to reasonably regulate
- Nonetheless, a regulation of property still can go too far and become an indirect taking
  - Excessive government regulation of property can amount to compensable taking (i.e. “**Regulatory taking**” / “inverse condemnation”)



# TAKINGS

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DOES A REGULATION AMOUNT TO AN  
ACT OF EMINENT DOMAIN REQUIRING  
COMPENSATION?



# Significant “Takings” Cases

- ***Pennsylvania v. Mahon (1922)***: Excessive gov’t regulation could amount to a compensable taking.
- ***Penn Central Transportation v. New York City (1978)***: Delineated factors determining when gov’t regulation evolve into a taking: (1) the regulations economic impact on the property, (2) the extent to which the regulation has interfered with distinct investment-backed expectations and (3) the character of the government’s action. (“Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law.” ... “where State “reasonably conclude[s] that ‘the health, safety, morals, or general welfare’ would be promoted by prohibiting particular contemplated uses of land,” compensation need not accompany prohibition.”)
- ***Nollan v. California Coastal Commission (1987)***: an excessive exaction amounts to taking if there is no nexus between the condition and the purpose of the restriction/exaction. (“Our cases have not elaborated on the standards for determining what constitutes a ‘legitimate state interest[,]’ [but] [t]hey have made clear ... that a broad range of governmental purposes and regulations satisfy these requirements”)
- ***Lucas v. South Carolina Coastal Council (1992)***: Total deprivation of productive or economically beneficial use of land requires compensation. (“regulations that leave the owner of land without economically beneficial or productive options for its use—typically, as here, by requiring land to be left substantially in its natural state—carry with them a heightened risk that private property is being pressed into some form of public service under the guise of mitigating serious public harm”)
- ***Dolan v. City of Tigard (1994)***: excessive exaction (green space dedication and pedestrian plan required for permit approval) gov’t may not condition a permit on certain requirements unless those requirements have a “rough proportionality” to the proposed development’s impacts.

# Types of “Takings”

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- A Plaintiff seeking to challenge a government regulation as an uncompensated taking of private property must allege one of the following:
  - 1) A “Physical” taking
  - 2) A “*Lucas*-type” total regulatory taking
  - 3) A “*Penn Central* taking”
  - 4) A land-use exaction violating *Nollan* and *Dolan* “*per se* physical taking”



# EXCESSIVE REGULATION = COMPENSATORY TAKING

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- Regulation requires property owner to submit to **physical invasion of land/permanent physical occupation** of real/personal property
  - Right to exclude others is fundamental to private property ownership
- (Case is *Loretto*)
- Regulation deprives property owner of **all economically beneficial/productive** use of the land
- Even if it is, still may be justified by background principles of property law/nuisance law
- (Case is *Lucas*)

## *NOLLAN & DOLAN'S* UNIQUE CIRCUMSTANCES: EXACTIONS

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- “**Exaction**” = conditioning approval of development on dedication of property to public use, and they also can include conditioning development approval, e.g., permit subdivision plat, etc., upon developer making some financial commitment, such as requiring construction of public street, this is known as a “monetary exaction”.
- The term “**exaction**” encompasses both requirements that land be dedicated for street rights-of-way, parks, or utility easements and requirements that developers pay “impact” or “facility” fees reflecting their respective prorated shares of the cost of providing new roads, utility systems, parks, and similar facilities serving the entire area.



# *Nollan*

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- Gov't conditioned development request on condition the owner give the gov't unrelated property interest
- U.S. Supreme Court:
  - Exaction is unconstitutional if it doesn't somehow mitigate public harms that would justify outright denial of permission
    - *Dolan* calls this the “nexus” requirement



# *Dolan*

- Exaction required property owner to dedicate land to the public for a bike and pedestrian path in order to obtain permission to expand owner's store
- Explained *Nollan* as an application of “unconstitutional conditions doctrine”:
  - Gov't can't require property owner to surrender constitutional right in exchange for discretionary public benefit
- U.S. Supreme Court said an exaction must:
  1. Mitigate harms of the proposed development (the “nexus” requirement from *Nollan*); **and**
  2. Condition must also be roughly proportional to public harms threatened by proposed development.

*OTHERWISE,  
THERE'S NO  
DEFINITE LINE.*

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Difficulty is determining when a regulation is “excessive”, requiring compensation

- Requires complex consideration of various factors
- “Ad hoc” / case-by-case determination
- But, the **greater the negative economic impact of the regulation, the more likely courts will consider it a taking**



# HOW WILL COURTS ANALYZE A REGULATION THAT'S NOT SO CLEARLY DEFINED?

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- *Penn Central's* balancing test:
  - **The character of the governmental action involved in the regulation;**
    - Remember, if the government's action is a physical action, rather than a "regulatory invasion", then the action is almost certainly a taking.
  - **The extent to which the regulation has interfered with the owner's reasonable investment-backed expectations for the parcel as a whole; and**
  - **The regulation's economic impact on the affected property owner.**

# A FINAL CONSIDERATION: THE “NOXIOUS USE” TEST

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- If a regulation adopted under the police power to protect the public health, safety or welfare, courts have said it is not a taking, even if the taking reduces the value of the property.



# TAKINGS OVERVIEW

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CONCLUSION/QUESTIONS



To whom it may concern:

The Kenai Peninsula Aggregate and Contractors Association does not support ordinance 2022-36. We feel that it is flawed in many ways, and in some respects, impossible to follow.

Below is a detailed list of our grievances with this document and reasons why. This includes, but is not limited to our concerns at this time. Our members are still digesting all applied situations applicable.

21.29.010 (c) This regulation gives us no access to any waterbody. It has been common in sites and mining to access non fish bearing streams and creeks within the state and even sometimes divert them for access to a commodity such as gravel or precious metals.

21.29.015 (a) This regulation went from 10ft to 32ft. 32ft buffer on a parcel less than 1 acre does not leave enough land to produce much at all. It would be extremely hard to operate in that space. Renders the exception almost useless.

(c) This regulation imposes current reclamation plans and buffers to PEU sites. While some consideration may be achieved on reclamation plans, the buffers of 32ft are likely impossible to achieve and considerably over-reaching. These PEU sites have been active or existing for sometimes longer than the KPB itself and have buffers less than 32ft. The material needed to comply may not be available and the work and cost associated to place 32ft of earth is enormous. Also, it is unbecoming of the KPB to change the deal struck years ago with the site operator or their successors.

21.29.020 (a) This regulation enlarged total acres from 2.5 to 10 acres, raised the floor 2 more feet, yet prohibits processing, screening, and crushing. This renders the permit useless as by definition, processing is what we do. 95% of our members or site operators screen material. Most have a small plant that makes very little dust or noise. Almost no complaints have been filed from this activity. Most small operations produce less than 750cu yds of material per day. The loss of 2 ft of material from the water table is unsubstantiated, and unnecessary. Not only does it create a loss of opportunity to the operator, but it takes a valuable commodity out of circulation and decreases the life of a site. This will only cause more contention with the public as more CLUP's will need to be applied for more frequently and in more areas. We feel this is going the wrong direction and we should be allowed to dig in the water table a minimum distance with standard conditions to extend the life of sites. Only if a major dig beyond the minimum distance, would a water table permit be needed.

(b) (1) Same grievance and reasoning as above.

(b) (2) Processing CLUP. This should not apply to small operations.

21.29.030 (a)(7)(e) This regulation sort of sheds the government's responsibility to construct and maintain standard roads and puts that responsibility on the site operator. All roads in the KPB should be up to KPB or State of AK standard. We pay taxes too.

(8)(b) This regulation demands we dig test holes 4 ft below proposed elevation. Some areas have deposits of gravel or peat that are deeper than common equipment can dig. It will commonly be an impossible or unnecessary task.

(9)(b) This regulation suggests the planning director may provide additional information. This information should be specifically specified as we may not always have a director that is as knowledgeable as our current director, as written, this promotes possible conflict of process.

21.29.040 (a) You have all heard my testimony on the lawfulness of viewshed rights and the few ways they are regulated or transferred. "Street-level visual screening" is just as unlawful as before, just a different angle of repose. There is no need for this language in the code, as if the operator is complying with the buffers, they will absolutely, inadvertently, achieve the screening.

21.29.050 (a)(1)(a) This regulation imposes 32ft buffer. We proposed a larger berm, and thus a buffer, but with access granted in the water table to offset the loss. One requirement without the other allowance is again, costing the operator, removing a valuable commodity from circulation with the public, and promoting more contention with the public as the frequency of new sites will surely increase because the need is naturally going to increase. The Street-level visual screening is the same as previously explained. The use of Undisturbed natural vegetation is unlawful. Please research *Tigard v. Dolyn*. Without giving the operator a alternative use for the property, it is a takings without just compensation.

(a)(1)(b) This regulation allows for the use of, and replacement of, the buffer slopes. We accept the idea, but 30 days is too short a time frame as material to replace the excavation may need to be hauled in as waste material from construction projects. 90 days is more suitable. Onsite material will surely be needed for reclamation since there is no provision in this document for the average pit to dig shallow ponds, thus shrinking the total area needed to reclaim.

(a)(2) This regulation prohibits use of any on site water. How are we to do any dust suppression? How do we make septic rock with a wash plant? Calcium chloride uses water to apply it as well. Traditionally we have used ponds in our sites to fill water trucks to suppress dust, run a wash plant, or obtain compaction on job sites. Without this availability, we would need outside sources, and truck it in. this goes against the intent of protecting the public safety, health, and welfare, by imposing unnecessary truck traffic. Also, the availability of outside sources is extremely small, as we can not pump out of any fish bearing source, and would not want to as responsible operators. A small pond or minimum dig in the water table should be allowed with every CLUP. Major or deep digs should be looked at with a separate permit and requirements. A minimum amount of dewatering should be allowed with each CLUP. 75,000 gallons per day should suffice. A water truck is 4,000 gal. We have been operating at this level on the KPB for 50 plus years and have no record of incident. The bonding of wells should only apply if the well is close horizontally or vertically to proposed excavation. If the dig is 15ft and the nearest well is 80ft....they are in two different aquifer formations and not connected. No need to burden the operator as we have no record of wells being damaged by a material site.

(a)(4) As explained before, this goes against the intent of this ordinance without access to a water source. May in some areas be an impossible task, as we will not be able to haul water fast enough to keep up.

(a)(6) How are we to install a monitor well if we are not allowed to excavate within 4ft of the water table? Even a drill excavates material by definition.

(a)(7) When will the setback not overlap? So this is really 282ft. Also, child care facility needs to be licensed.

(a)(9) As explained before, a permit without processing is useless. We process material by definition. We would simply be not able to operate.



(b)(1)(a),(i) Giving the planning commission discretion to 100ft eliminates any standard. How are we to speculate a suitable site if we do not have a standard that wont more than triple? Plannings discretion should not be over 300% of the standard. It should be less than 50%. "an eight-foot-high berm above the preexisting elevation may be constructed" may needs to be changed to must.

(b)(2) Roads should be kept to standard by the government. Maintenance is included in the gov. responsibility's. If we damage a road, its on the operator to repair it. Government should not shed it's responsibility. We pay taxes too.

(b)(3) ingress and egress. There is no need for this regulation. No one knows the best choice for placement than the operator. This is sort of a double regulation as we are already regulated to conform to all applicable agencies.

(b)(4) This regulation imposes operators to operate outside their ownership. Some operators don't have equipment designed for work outside the site boundary. Certain accesses may have restrictions or other permits required for activity within their ownership. A site operator can not control outside influences.

(b)(6) As stated before, any visual language should be struck from any ordinance. Viewshed rights don't allow for it.

21.29.055(b)(1) Processing hours have been limited from 6am-10pm to 8am-7pm. This is commonly not enough time to get the necessary projects done in the construction season. 7am-7pm is more appropriate as discussed with our members.

21.29.057 This regulation does not allow for any dewatering. As stated before, we need the tools to do the job. A minimum dig for a water source should be allowed with a maximum dewatering of 75,000gal. in all permits to comply with dust mitigation, wash plants for septic rock and other uses, and to be in harmony with the intent of this ordinance and not create unnecessary truck traffic.

21.29.060 There is no consideration here for post mining uses. We should be promoting post mining uses.

21.29.070 This regulation says if you meet all requirements, the planning commission MUST renew permit...but then says they may impose additional requirements and therefore, would deny the permit, in essence, if the operator did not agree with the new requirements. Government should not make a deal and then change the goal posts! Very unbecoming of the KPB to do so.

21.29.115 This regulation is probably the most egregious. Many PEU's were here before the KPB was. Many came from homesteads. Many have been passed down as a last wish of a generation to ensure the next had a form of value. Also, many sites, PEU and CLUP, have been operated for years, with the sweat equity of the operator, with the intention of someday selling the operation and retiring. This regulation almost guarantees that the value is lost. The site would immediately turn from an asset to a liability as the loss of the PEU or CLUP would initiate immediate reclamation, whether the commodity was exhausted or not. It would go against the Alaska constitution to use our resources to the fullest extent. The reality is that almost surely, the site was there before any surrounding residents were and if the site was forced to reapply for a permit, the half mile radius of opinions would not be in favor. Very unbecoming of the KPB to suggest this.

21.29.120(b) There needs to be clarification and standards in which the director would make a decision to approve or deny. We reserve our grievance on this portion of code until more information is provided.

(c) This regulation is the second most concerning. 365 days is not near enough time. This code also goes against the intent of this ordinance as it, like the lack of water, will create unnecessary truck traffic, dust,



noise, and general activity. Many larger sites sit dormant for very good reasons. Many are reserved quantities of resources for major state projects. Not unlike the four-lane connection between Soldotna and Sterling. It is finally scheduled and there's a few sites that have been waiting years for it to happen. It is not uncommon for an operator to get sick or hurt for a year and skip a construction season. The residents around some of the sites that have been dormant have enjoyed a reprieve from any activity. This regulation would end that enjoyment, and guarantee activity every year. Also, this is another case that the government is changing the deal struck with operators years ago. A longer time frame may be manageable. Our members have discussed 10 years.

(f) As these are old sites, and deals were struck years ago, it will almost surely be hard or impossible for these sites to conform to the new reclamation requirements. The material may not be there to do so. If ponding or post mining uses aren't allowed, it will make it even harder to accomplish. Also, the hours of operation and reclamation plan requirements is again, the government moving the goal posts. Unbecoming.

(h) This needs to be clarified as "permitted excavation" it reads as a cease and desist order as written.

Thank you for your consideration,

Ed Martin III, President, KPACA.

**From:** [Blankenship, Johni](#)  
**To:** [Warner, Avery](#)  
**Cc:** [Turner, Michele](#)  
**Subject:** FW: <EXTERNAL-SENDER>Fwd: Proposed KPB ordinance 2022-36 regarding CLUPs and MSPs  
**Date:** Tuesday, August 23, 2022 6:08:09 PM

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**From:** Katharine M. Tongue <[kmtongue@icloud.com](mailto:kmtongue@icloud.com)>  
**Sent:** Tuesday, August 23, 2022 5:51 PM  
**To:** Blankenship, Johni <[JBlankenship@kpb.us](mailto:JBlankenship@kpb.us)>  
**Subject:** <EXTERNAL-SENDER>Fwd: Proposed KPB ordinance 2022-36 regarding CLUPs and MSPs

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

Hi, Johni. I sent this to Mr. Johnson and Mr. Chesley on the 12th. Didn't hear anything back - of course they're super busy - but realized I should've cc'd you. Thanks very much. Enjoy the meeting.  
Katie

Begin forwarded message:

**From:** Katharine Tongue <[kmtongue@icloud.com](mailto:kmtongue@icloud.com)>  
**Date:** August 12, 2022 at 12:20:13 PM AKDT  
**To:** [bjohnson@kpb.us](mailto:bjohnson@kpb.us), [lchesley@kpb.us](mailto:lchesley@kpb.us)  
**Cc:** John & Katie <[jbandkt@gmail.com](mailto:jbandkt@gmail.com)>  
**Subject:** **Proposed KPB ordinance 2022-36 regarding CLUPs and MSPs**

Dear Mr. Johnson and Mr. Chesley,

I'm writing with regard to proposed KPB ordinance **2022-36** regarding CLUPs and MSPs.

We are a small Kasilof operation, extracting our material in stages, over the long term, conscious of the wildlife, scenery, and reasonable use of all materials involved. We engage with our neighbors in the years we operate the pit and have very good relationships. While we have sold to large highway projects in the past, we prefer to limit our sales to individual contractors and neighbors.

I'm still working my way through your document, but 3 concerns are immediately apparent:

Under 21.29.120. *Prior-existing uses*, Clause D, *Expansion Prohibited* of your proposed ordinance, it sounds like you are asking that we clarify our footprint prior to October 1st in order to protect our PEU status. Do you mean that our entire PEU property must be cleared of trees? of topsoil? While beetle kill will soon render that suggestion somewhat less ridiculous, stripping our property in order to preserve our pre-existing right to extract our material strikes me as completely contrary to the goals of this amendment process. What is wrong with using current mapped parcel parameters? We can bulldoze our property/forrest but that seems counter to good sense. I think you are trying to prevent adjacent property purchasers from being offended after they did not look at a map when they purchased their land. That seems to be coddling at our expense (as well as current neighbors' when we are forced to clear a current visual and auditory barrier). Give thought to how you can achieve your goals without causing more neighborhood problems - as this directive will. We will be obliged to clear right to property lines which we have avoided thus far.

My second objection regards Clause C, *Discontinuance*. Again, given our historic and long term plan for extraction of material, there have been and may be years where there is no extraction. Why is that a problem? If you are looking to prevent operators from reopening old pits, consider a 3-5 or 10 year 'fallow' rule as opposed to one. One year is too draconian.

Third, regarding A. *Determination* and B. *Decision*, we went through this to comply with 21.29.120. (Prior existing uses. B. Owners of sites must have applied to be registered as a prior existing use prior to January 1, 2001.) Why do you need to impose this burden again? If it is intended to weed out the pits whose owners are no longer engaged, then please make the application process simple for those of us you are imposing this burden upon.

Thank you for your consideration.

Katie Tongue.  
Owner, JBKT, LLC



**DATE:** August 30, 2022

**TO:** KPB Assembly

**SUBJECT:** Ordinance 2022-36 Amending 21.25 & 21.29  
Regarding CLUP & Material Site Permits

**RE:** Technical Recommendations

The proposed ordinance does a good job in laying out and addressing different aspects material site permitting and the areas that need improvement regarding material site permitting and management.

After initial review of the proposed ordinance, there are two sections that I am submitting written comment on currently.

**21.29.030.A.7 & 21.29.030.A.8**

The Application Procedure section designates which parts of site map and site plan should be prepared by a professional surveyor versus a professional engineer. As written, these sections do not properly differentiate responsibilities of the two disciplines. Recommended amendments are as follows:

Part 7 Subsection a. Separated into both professional qualifications as follows: areas of existing excavation should be shown on Surveyor's map & areas of proposed excavation & reclamation should be part of Part 8 Engineering.

Part 7 Subsection b. Proposed buffers should be included in Part 8 Engineering.

Part 7 Subsection d. Separated into both professional qualifications as follows: areas of existing ingress/egress should be shown on Surveyor's map & areas of proposed ingress/egress should be part of Part 8 Engineering.

Part 7 Subsection e. Anticipated haul routes should be included in Part 8 Engineering.

Part 7 Subsection f. Should be separated into both professional qualifications as follows: areas of existing processing should be shown on Surveyor's map & areas of proposed processing should be part of Part 8 Engineering.

Part 8 Subsection b. Locations of test holes and depth to groundwater should be included in Part 7 Surveying.

Part 8 Subsection c. Locations of private wells of adjacent property owners should be included in Part 7 Surveying.

Part 8 Subsection d. Locations of any waterbody on the parcel should be included in Part 7 Surveying.

Page 1 of 2



Basically, any existing conditions should be included Part 7 Surveying and planning related items should be included in Part 8 Engineering.

**21.29.055 Earth Material Processing**

The Borough needs to add in a reference to blasting. While blasting to mine or process material isn't very common in the Borough there are areas of the borough where hard-rock mining is taking place and should be covered in permitting. Blasting will also become more prevalent in the Borough as the high-quality riverbed deposited gravels are exhausted.

Please feel free to contact me if you have any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina DeBardelaben".

Gina DeBardelaben, P.E.  
Vice President

**From:** Blankenship, Johni  
**To:** Warner, Avery  
**Subject:** FW: <EXTERNAL-SENDER>Material site 2022-36  
**Date:** Thursday, September 1, 2022 1:25:43 PM

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## Laydown public comment

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**From:** Greg Turner <prudhoedude@gmail.com>  
**Sent:** Thursday, September 1, 2022 1:25 PM  
**To:** G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Material site 2022-36

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

Unregulated or grandfathered Material Sites and Gravel Pits have a long history of causing harm and pollution in KPB.

We taxpayers need to be protected with regulations and control to work permits and monitoring. Helping to prevent on going problems and issues created by these uncontrolled sites doing what is now illegal in controlled sites. Some examples in my area Kobuk between Spruce and Big Eddy are mining gravel below the aquifer level. Not having proper site slopes adjacent to roads, and high pressure gas transmission lines. Dumping on site of organic or nor organic material. Non functioning Junk heavy equipment and big trucks, pickups and other items, Atco trailers, RV's equipment shops and buildings. These new regulations can help prevent problems.

Recent 8/23/22 unpermitted water release by Glen Martin's Gravel Pit doing business as Northern Enterprises from three large ponds, created by digging 30' below the waters surface that is the exposed aquifer level. This is the natural aquifer level in the area 35-40 ft below Kobuk Rd between Spruce and Big Eddy Road. The surface of those ponds are 12'-15' above Greenridge St, my neighborhood and they are 25-30 feet deep. The released water flowed through Doug Norris's Gravel Pit off of Joplin Ct and Greenridge St covering Greenridge St.

In the past Glen Martin has breached the artisan aquifer twice that we know of in the last seven years. Once resulting in flooding of Greenridge St neighborhood and home crawl spaces yards similar to what we are experiencing now.

If you dig deeply 30' below the natural aquifer level to extract gravel to sell you end up with big deep ponds that are always going to be there. Open exposed deep water ponds are dangerous to humans and animals. Creating hazards for money that could possibly cause harm to citizens from flooding or drowning or impact water quality of the local wells.

This gravel pit has a low side 5' above the pond water level of exposed sand adjacent tp Doug Norris's Pit that looks like a dike separating and containing these elevated ponds. Not ideal as it looks more like a dam.

Filling a pond with beetle kill trees and slash or dirt will displace the water resulting in overflow of the ponds. The water has to go someplace.

---

Water containment, Junk equipment, miscellaneous scrap and metal, older shop buildings.

Truly amazing to look at the new regulated material sites compared to the older uncontrolled sites.  
Help to keep the KPB clean, vote to regulate and control these older unregulated sites and pits.



**From:** [Blankenship, Johni](#)  
**To:** [Warner, Avery](#)  
**Subject:** FW: <EXTERNAL-SENDER>Visual Screening of a Material Site  
**Date:** Thursday, September 1, 2022 9:57:11 AM

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[For laydown packet](#)

---

**From:** Hans Bilben <catchalaska@alaska.net>  
**Sent:** Wednesday, August 31, 2022 10:43 AM  
**To:** Blankenship, Johni <JBlankenship@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Visual Screening of a Material Site

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

Hi Johni,

Please forward this to all Assembly members and copy to Legal and the Planning Director

Assembly Members,

As you are likely aware, the author/authors of the proposed material site ordinance rewrite have purposely removed visual screening (other than street level, whatever that means) from the ordinance. The result of this action would be that a large number of borough residents will not have equal protection under the law. If you live at street level in a one story structure you're possibly protected, but any multi story dwellings, and all houses at higher elevations will be left totally unprotected from negative visual impact. If the author(s) have a legitimate and legal reason to deny this basic protection, please have them explain it in public. KPB code currently requires visual screening for material sites, marijuana operations, and animal feed lots. MatSu code, which seems to be the foundation for the proposed rewrite, requires visual screening. When a buffer zone is properly designed visual screening and noise screening are both dependent upon visual line of sight. To write the Standard for visual screening out of the ordinance would be a huge step backwards for the residents of this borough.

Please take a couple minutes to read the following information concerning visual

screening and its relevance to the KPB Comprehensive Plan, and please ensure that any new ordinance will continue to provide this basic protection to ALL residents of the borough.

Thank You,

Hans Bilben

The standards and conditions relating to the operation of a material site are to avoid certain land uses which may be potentially damaging to the public health, safety and welfare (21.25.020). Restrictions must be rationally related to a legitimate government objective, and ensuring protection of the public health, safety and welfare is a legitimate objective.

Standards and conditions to “minimize visual impacts” certainly shield surrounding property owners from actually seeing the material site activities. But they also do more – they mitigate against devaluing surrounding land values (a public welfare issue); they mitigate against noise (public health); they mitigate against dust (public health); they mitigate against the potential that a material site turns into an attractive nuisance (which is a dangerous condition on a landowner’s property that may

particularly attract children onto the land and pose a risk to their safety) as essentially what is being created appear to neighboring (public safety); they mitigate against the negative impacts such sites have on preservation of the scenic beauty and furtherance of the tourism industry (public welfare) (Per comprehensive plan, tourism and hospitality are major parts of the Kenai region's economy and represent the second-largest private employment sector after healthcare)

The guiding principals to better regulate land use are  
 Balance and integrate multiple interests in land use: the right to use land as you choose; the right to not be excessively impacted by neighbors who exercise that freedom; and the shared value in protecting the underlying health of borough natural systems  
 Develop regulations that will minimize conflicts between adjoining uses, maintain property values, maintain and improve neighborhoods, communities and natural systems  
 Develop an improved set of Borough land use regulations to reduce reoccurring conflicts on the same narrow set of issues such as gravel pits.  
 The Comprehensive Plan specifically calls for consideration of establishing conditions that require larger setbacks, safety and visual screening, control on access routes, control on hours of operation, and address

environmental concerns.

Consideration of updating the list of topics that staff and Planning Commission may consider when setting conditions of approval.

Incorporate safety, visual quality, environmental impacts and traffic impacts.

**From:** [Blankenship, Johni](#)  
**To:** [Warner, Avery](#)  
**Subject:** FW: <EXTERNAL-SENDER>Fwd: Gravel pit in back of 50-51 Greenridge Drive causing flooding and eroding my property. Ordinance 2022-36  
**Date:** Thursday, September 1, 2022 12:22:41 PM

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## Laydown public comment

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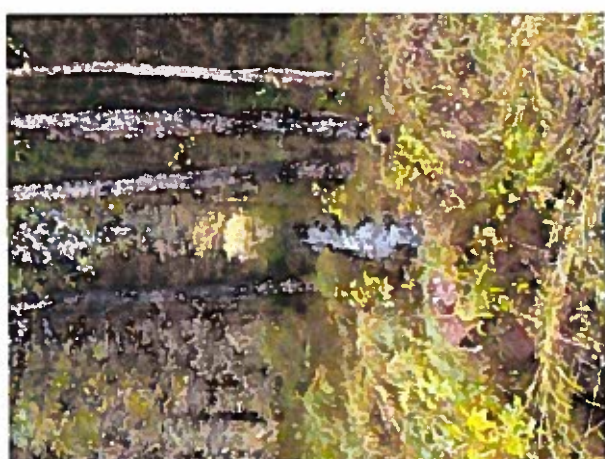
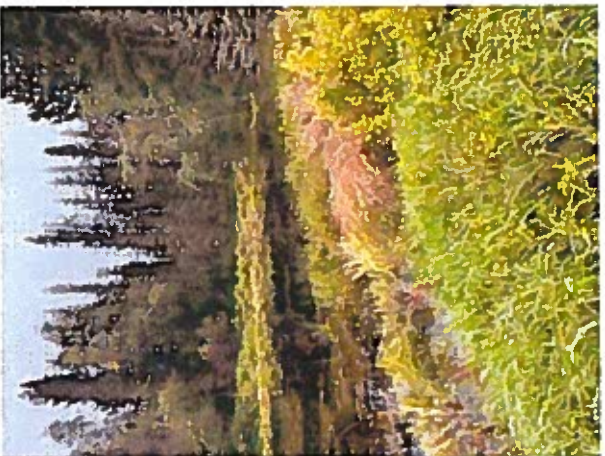
**From:** DR Lee <[dr.lee@live.com](mailto:dr.lee@live.com)>  
**Sent:** Thursday, September 1, 2022 12:09 PM  
**To:** G\_Notify\_AssemblyClerk <[G\\_Notify\\_AssemblyClerk@kpb.us](mailto:G_Notify_AssemblyClerk@kpb.us)>  
**Subject:** <EXTERNAL-SENDER>Fwd: Gravel pit in back of 50-51 Greenridge Drive causing flooding and eroding my property. Ordinance 2022-36

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

Sent from my iPhone

Begin forwarded message:

**From:** DR Lee <[dr.lee@live.com](mailto:dr.lee@live.com)>  
**Date:** September 1, 2022 at 12:07:34 PM AKDT  
**To:** [assemblyclerk@kpb.com](mailto:assemblyclerk@kpb.com)  
**Cc:** Ohare Russ <[ro\\_ua@live.com](mailto:ro_ua@live.com)>, Soldotna Neighbors Elena Staab <[elena-joy@hotmail.com](mailto:elena-joy@hotmail.com)>  
**Subject:** Gravel pit in back of 50-51 Greenridge Drive causing flooding and eroding my property. Ordinance 2022-36







Sent from my iPhone

We have owned lots 50-51 Greenridge Street in Ridgeway for over 12 years; and, we have never seen the pond in back of the property overflow or be even high. The pond is usually very low. For the past week the pond has overflowed and it's now eroding our property. Greenridge Street is flooded.

If you drive and observe the pit that is adjacent to Kobuk Street and Spruce Ave E and that now surrounds this area, you will see that the topography and drainage resulting from the pit overreach is changed and flooding; thus, ruining the residential property in the area. This overreach must stop.

Thank you for a quick resolution to this problem.

Sincerely,

Drs Cynthia Lee and Russell James O'Hare  
907-3782987



2022-36

From Gary and Eileen D Sheridan, Anchor Point, AK

**For State of Alaska residents and tourists health, safety, and sight, Please Add this Amendment to the new KPB Regulations for Gravel Pits Under 21.29.040. Add B. Gravel Pits will not be allowed in a residential area, close to recreational State Parks and Rivers, due to the Silica that can be inhaled and cause Silicosis and other fatal conditions.**

Notice in the following articles, what other illnesses the silica dust can cause.

What is Silicosis? Please read the following articles.

<https://www.stopthegravelpit.com/post/crystalline-silica-dust-the-invisible-killer>  
attached.

Also, From MedlinePlus - part included

<https://medlineplus.gov/ency/article/000134.htm>

"Causes - Silica is common, naturally-occurring crystal. It is found in most rock bed. Silica dust forms during mining, quarrying, tunnelling, and working with certain metal ores. Silica is a main part of sand, glass workers and sand-blasters are also exposed to silica. Three types of silicosis occur:

Chronic silicosis, which results from long-term exposure (more than 20 years) to low amounts of silica dust. The silica dust causes swelling in the lungs and chest lymph nodes. This disease may cause people to have trouble breathing. This is the most common form of silicosis.

Accelerated silicosis, which occurs after exposure to larger amounts of silica over shorter period of time (5-15 years). Welling in the lungs and symptoms occur faster than in simple silicosis.

Acute silicosis, which results from short-term exposure to very large amounts of silica. The lungs become very inflamed and can fill with fluid, causing sever shortness of breath and a low blood oxygen level....Intense exposure to silica can cause disease within a year. But it usually takes at least 10 - 15 years of exposure before symptoms occur. Silicosis has become less common since the Occupational Safety and Health Administration (OSHA) created regulations requiring the use of protective equipment, which limits the amount of silica dust workers inhale....."click on the reference above to finish reading."

Also read please

<https://www.sciencedirect.com/topics/medicine-and-dentistry/silicosis>

The noise even a block away can cause such noise to disturbances as it did me this summer after a busy day and needing sleep. Can you imagine being a visitor coming to enjoy the State camp ground on the Anchor River for a week's or holiday vacation and having to deal with the noise of the machines working the gravel pit and trucks.

I don't know how the KPB can possibly agree to have a gravel pit and mining that may cause such illnesses to our families, grandchildren, and tourists. I'm now scared for my grandchildren that came this summer to fish and vacation with grandpa and grandma and enjoyed running around in our yard, riding the bikes grandpa had fixed up for them. Have we unknowingly allowed them to have the start of Silicosis from the gravel pit which was denied but then given 2.5 acres to work? We built a "Beachy Built Home" with an air system never expecting to have

From Gary and Eileen D Sheridan, Anchor Point, AK

a gravel pit being put in 15 years later. That fine dust gets in everything. Look at the different types of cancer that has been shown to be causes of gravel pits and mining. I know what it is like to fight cancer. I had just started treatments in Soldotna when we first found out there was a plan to have a gravel pit in our neighborhood. Our rivers help bring our tourist businesses, and we should protect those businesses, too.

Respectfully submitted to the work group of KPB to update regulations for Gravel Pits,  
Eileen and Gary Sheridan



Photo by friend of ours who visits us almost every year.

# **Crystalline Silica Dust — The Invisible Killer**

**How a *Totally Unnecessary* Gravel Mine Would Create  
Widely Known Deadly Health Issues  
That Would Harm Hundreds of Benzie County Residents**

Developed for and Presented to the  
**Homestead Inland Joint Planning Commission**  
December 6, 2019

prepared by



## **Crystalline Silica Dust — The Invisible Killer**

### **Summary**

The proposal of an open pit gravel mine in a district zoned Rural Residential creates numerous very serious consequences. This report primarily examines the devastating health issues created by crystalline silica dust, an unavoidable byproduct produced when mining gravel.

Until recently, few understood the dangers created by crystalline silica dust. Unlike normal sand, crystalline silica dust has razor sharp edges and is microscopic in size. When inhaled, it bypasses the body's natural defenses and become *permanently* lodged in the deepest parts of the lungs. It has proven links to diseases that lead to death including silicosis, lung cancer, COPD, renal failure, and kidney disease as well as causing auto-immune diseases like rheumatoid arthritis. These health issues are so grave that OSHA and MIOSHA have recently adopted new safety standards to deal with crystalline silica dust. Both agencies are involved in a massive educational drive to warn workers about the dangers.

Not only is crystalline silica dust deadly, it is difficult to control. Clouds of it can easily be swept up and carried by the wind for tens of miles. Even in what weather experts call 'calm' winds, this deadly dust can travel for miles settling in the yards and on the homes and innocent bystanders in Inland Township, its three neighboring townships, and even further.

All of the related diseases crystalline silica dust is widely known to cause serve as sufficient proof of a 'very serious consequence' health based issue as required under MCL 125.3205 Sec. 205 (5)(e). Denying the requested special use permit for this totally unnecessary gravel mine at parcel 08-006-007-00 is the only logical, fair, and humane course of action the HIJPC can take.

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Bohne Road Gravel Mine Memorandum .....	Appendix D

Direct any questions  
about this report to:

**Jim Brouwer**  
Friends of the Platte River Watershed  
[jim@platteriverwatershed.org](mailto:jim@platteriverwatershed.org)



## Crystalline Silica Dust — The Invisible Killer

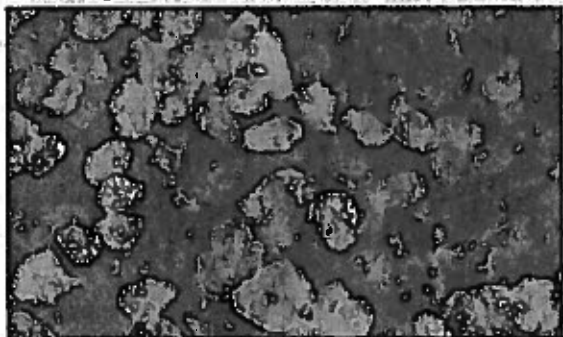
### Sand's Tiny Secrets — Size, Material, & Shape

Sand holds some interesting secrets. We think we know what it is, but do we? Technically, 'sand' is any sediment whose particles are 60µm (microns or micrometers) or larger. Granules smaller than 60µm down to 2µm are considered 'silt.' For a point of reference, the hairs on your head are typically 10µm thick.

Sand is often referred to as 'silica.' Most sand deposits are primarily made up of quartz, but other minerals are usually found. Quartz is *crystalline silica*, a silicate mineral made of silicon dioxide (SiO<sub>2</sub>), silicon and oxygen. It is the most abundant mineral found in sand.

Figure 1 shows a typical sample of sand, not unlike that which is found all around northern Michigan. It is comprised mostly of crystalline silica (quartz), with some epidote, garnet, potassium feldspar, and a few other minerals.

Figure 1 — 'Sand' ( 300x Magnification )



Different types of sands are put to work in a wide range of useful applications including: road construction, concrete, filtration, glass, ceramics, and computer chips. They also vary considerably in their marketable value.

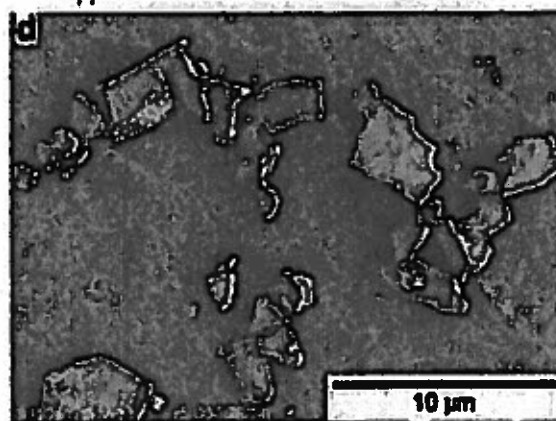
Most sand with which we are familiar is heavily weathered. It has the familiar shape of

stones washed up along the Lake Michigan shoreline. While their sizes may vary a bit, they all have nicely rounded, smooth edges.

Digging into the earth when mining for gravel, the size and shape of these unweathered common sand granules change dramatically.

Figure 2 — Crystalline Silica Dust  
( 5,000x Magnification )

Appendix A shows three even smaller sizes.



Note the 10µm graphic in Figure 2. That's the width of a typical human hair. Anything smaller than 5µm is invisible to the naked eye, unless there are billions of particles — as in crystalline silica dust clouds (see Appx. D p.4).

These jagged microscopic sub-10µm particles are as sharp as a stone-age flint knife — and they can kill you!<sup>1</sup>

### Crystalline Silica Dust IS Deadly

Unlike beach sand which is just annoying when it sticks to your skin and swimsuit, crystalline silica dust *is* a killer. Don't take our word for it, just take OSHA's.<sup>2</sup>

*"[Those inhaling] these very small crystalline silica particles are at increased risk of developing serious silica-related diseases."*

<sup>1</sup> Silica...It's Not Just Dust: Silica Dust Causes Silicosis - What rock drillers can do to protect their lungs from silica dust, Center for Disease Control and Prevention, National Institute for Occupational Safety and Health, NIOSH Publications, 97-118, July 1998

<sup>2</sup> *Respirable Crystalline Silica*, Occupational Safety and Health Administration, United States Department of Labor, [osha.gov/dsg/topics/silicacrystalline/](http://osha.gov/dsg/topics/silicacrystalline/)

## Crystalline Silica Dust — The Invisible Killer

In 2017, OSHA completely revamped their requirements for worker safety when engaged in activities where crystalline silica is present.

Plastered all over OSHA's website and materials is the warning graphic shown here.



So, what exactly are those 'serious silica-related diseases?' They include (but are not limited to):

- ☛ Silicosis
- ☛ Lung Cancer
- ☛ COPD (Chronic Obstructive Pulmonary Disease)
- ☛ Kidney Disease

Silicosis is an incurable lung disease that leads to disability and death. We've all heard of 'black lung disease.' Black lung expert, Dr. Robert Cohen, has recently warned that

*"[Crystalline] Silica could be even more dangerous to workers than coal dust.*

*[Crystalline] Silica is actually a lung carcinogen. And it causes renal disease, it causes other auto-immune diseases like rheumatoid arthritis and other things, so silica exposure is a huge problem.<sup>3</sup>*

So serious is this issue that even the Michigan Aggregate Association (the lobbying organization behind the totally discredited MDOT *Michigan Aggregates Market Study Ph I & Ph II Reports*) is actively encouraging its member supporters to attend OSHA approved silica training!<sup>4</sup> Why does the MAA promote this you ask?

*"To increase workers' awareness of the serious health hazards of silica dust and provide the knowledge necessary for employee protections."*

### Why is Crystalline Silica Dust So Deadly?

Mother Nature provided our respiratory tracts with a host of protective mechanisms to 'filter out' most of the junk that *naturally* occurs in our air. Since most of what nature throws at us is over 10µm in size, we do a pretty good job of keeping the bad stuff out of our bodies.

However, breathing crystalline silica dust is the equivalent of inhaling millions of microscopic razor blades. As shown in Appendix A, these dust particles can be as small as .01µm.

These invisible particles pass all body defense mechanisms and become embedded in the deepest reaches of the lungs. This is where the greatest danger lies as they reach the alveoli, the finest branches of the lungs where the oxygen/carbon dioxide exchange takes place.<sup>5</sup>

When inhaled, particulate matter larger than 5µm usually gets trapped and expelled before it reaches the lung's gas-exchange zone. Particles smaller than 5µm are considered to be 'respirable,' meaning they can reach the deepest parts of the human lungs.

<sup>3</sup> Silica safety urged in QLD, OHS Career, March 21, 2017, [ohscareer.com.au](http://ohscareer.com.au)

<sup>4</sup> *Protecting and Promoting Your Interests*, Michigan Aggregate Association, November 16, 2019 See Appendix B

<sup>5</sup> A. Voss and S. Alfano, *The Body's Defenses Against Breathing Dirty Air*, ProRemodler, June 23, 2016



### Crystalline Silica Dust — The Invisible Killer

Mother Nature never planned on us being exposed to crystalline silica dust, certainly not in the quantities produced by our many industrial activities. Silicosis can develop very quickly and (short of an entire lung transplant) is completely untreatable.

#### Think You're Safe? — Wrong!

OSHA is making a tremendous push to raise worker awareness of the real hazards created by crystalline silica dust. Wearing adequate dust protection, respirators, and controlling the dust in the first place will save countless lives. How about those who don't work around this stuff?

Non-occupational exposure to crystalline silica dust is even greater cause for concern. As this 'killer dust' spreads miles past its place of origin it not only lingers in the air but settles everywhere — including *inside* homes.

We spend the majority of our time at home. Depending on our job and lifestyle that can be 70%-100% of our time. Unlike a protected work environment, exposure at home is unprotected and constant. Home settings also includes children and the elderly who are more vulnerable than able bodied workers. Not only do children breath more deeply than adults, their smaller body mass means their comparable exposure risk is much higher.<sup>6</sup>

Exposure limits for crystalline silica differ considerably between work and non-occupational exposure. OSHA's permissible exposure limit is 50 micrograms per cubic meter during an 8-hour workday.<sup>7</sup> Michigan follows these guidelines which includes an

'action level' set at 25 micrograms per cubic meter. Michigan also requires employers to safeguard employees from exposure, provide them with respiratory protection, maintain medical surveillance, engage in hazard communication, and keep good records.<sup>8</sup>

For those who spend all their time at home, equivalent exposure limits would fall below 12 micrograms per cubic meter for exposure and 6 micrograms per cubic meter for action.

#### I'm Nowhere Near Silica Dust — Really?

Turns out, size really does matter. For crystalline silica dust, the smaller it is the more threatening it becomes. Not only is this invisible dust respirable, it easily becomes airborne, stays airborne for extended periods of time, and travels incredible distances.<sup>9</sup>

Particles typically need to be under 200µm in size to become airborne. Those smaller than 10µm are invisible and smaller than 5µm penetrate our immune system. As shown in Figure 3, dangerous crystalline silica dust easily travels for miles. It not only affects people at the source but those in surrounding neighborhoods. In some measured cases as far away as 50 miles.<sup>10</sup>

Figure 3 – Distance Traveled by Particulate Size

Wind Speed (mph)	Miles Traveled	
	10µm	5µm
3.1	0.55	2.2
6.2	1.1	4.5
12.4	2.3	9
24.8	4.6	18
37.3	6.9	27
49.7	9.2	36.1

<sup>6</sup> J. Warren, *Silica Monitoring*, Public Lab, publiclab.org, February 22, 2018

<sup>7</sup> C.A. Epstein, *Everything You Need to Know About OSHA's Respirable Crystalline Silica Final Rule*, February 2, 2018, oshaonline.com

<sup>8</sup> *Crystalline Silica Exposure*, MIOSHA Fact Sheet, CSH Fact Sheet - #109, Revised October 12, 2017

<sup>9</sup> *Silica Dust Particle Size Causes Problems*, BossTek, 2019, bosstek.com/silica-dust-compliance/silica-particle-size-behavior

<sup>10</sup> *How Far Can Respirable dust Actually Travel?*, Insider News, NeSilex, September 24, 2019

## Crystalline Silica Dust — The Invisible Killer

### How Far Will Silica Dust Spread Here?

The only available historic 'local' wind measurements are those taken at the Frankfort and Traverse City airports. Appendix C contains the diagrams of the wind history at both airports for the months of May – October (the busiest times for gravel production).

Roughly one-third of the time the wind is calm (less than 5.8mph). Calm doesn't mean 'dead calm.' Shown as red in Figure 5, at 5.8mph respirable silica would still travel 4.2 miles from the proposed 150-acre gravel mine.

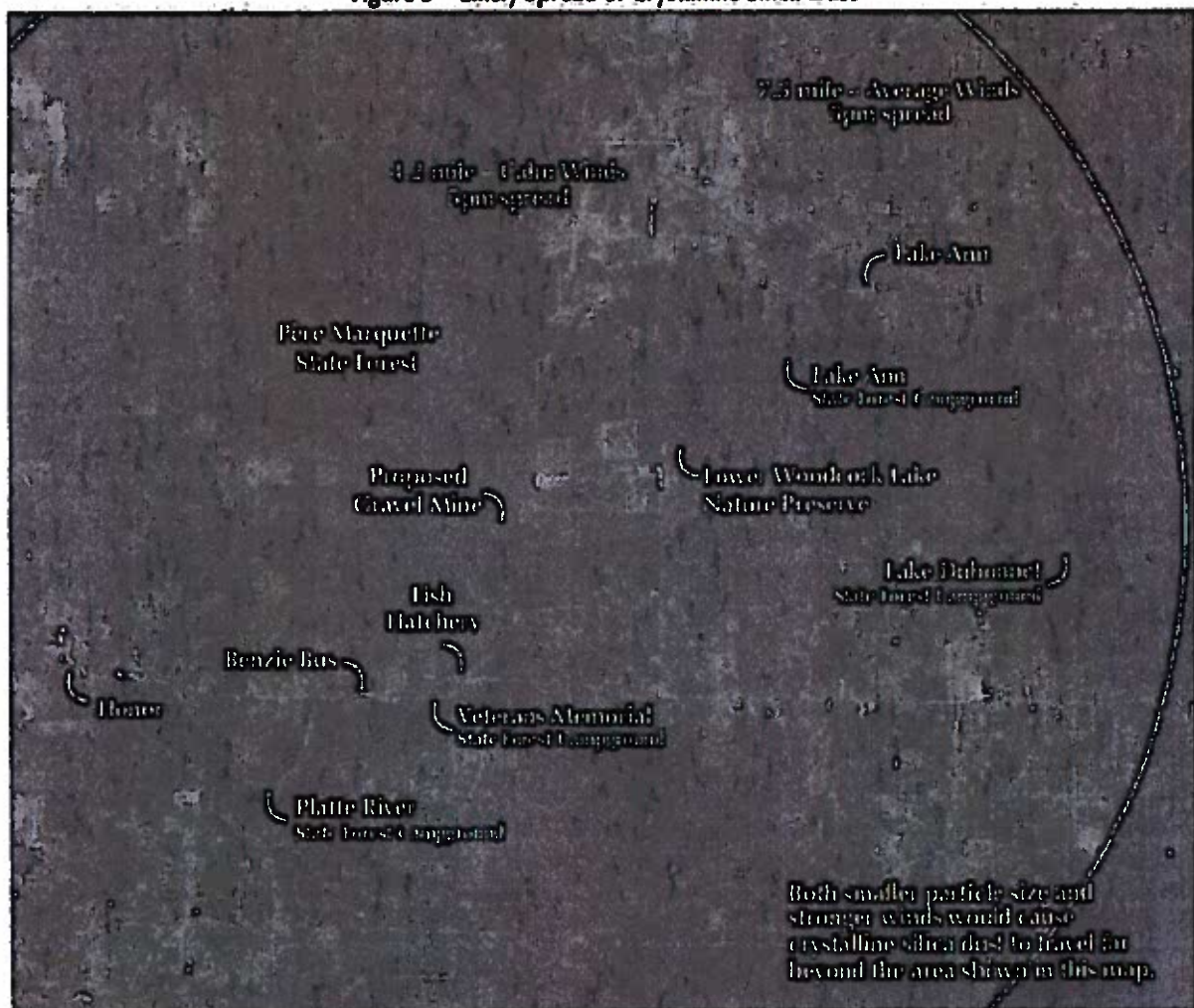
This area's Average windspeed over the past three years for May – October, the average Maximum sustained winds, and average Gusts are shown in Figure 4. The miles that silica dust can be spread relates to particulate size.<sup>11</sup>

Figure 4 – Crystalline Silica Dust Wind Distribution

	Wind Speed (mph)	Miles Traveled	
		10µm	5µm
Calm	<5.8	<1.0	<4.2
Average	10.3	1.9	7.5
Maximum	23.9	4.4	17.4
Gusts	39.8	7.4	28.9

Note: Silica Dust smaller than 5µm travels even further!

Figure 5 – Likely Spread of Crystalline Silica Dust



<sup>11</sup> While wind data was pulled from the Weather Underground, all data originates from the National Centers for Environmental Information, National Oceanic and Atmospheric Administration.

### Crystalline Silica Dust — The Invisible Killer

It's easy to understand how these microscopic razor blades carry so far in gentle winds. Strong gusts can carry crystalline silica dust all the way to Traverse City or Frankfort. As duly noted in the Homestead Inland Townships Master Plan, this truly is an issue of "Greater Than Local Concern."

**Where's the Problem? – You Can't Be Serious!** Mr. Leman has done little to instill confidence that he understands the consequences of his desire to have a hobby gravel mine. In a September 12, 2019, TV 7&4 News interview, Mr. Leman states

*"There's no production things we processes that we would do here which would pollute the ground in any way. That sand and gravel is already in the ground."*

Seriously? It is obvious he doesn't understand the environmental impact of gravel mining or the dangerous release of crystalline silica dust which mining causes.

Mr. Leman is also quoted in that interview and in papers saying he's only going to work on 4-acres at a time. Yet all of the plans submitted to and described at HIJPC meetings clearly show sections of 6+ acres. If he is so inattentive to these and other details, how can he ever be trusted to understand or look after what's necessary to run a gravel mine safely?

Crystalline silica dust is a serious health issue. Given Mr. Leman's lack of responsiveness to providing a complete and timely application, let alone his inconsistency within those plans, many believe he's not taking things seriously. If that's the case and if his special use permit is granted, many wonder if he would ever follow safety precautions or take any laws seriously.

Given there appears to be no statutory value to the gravel as defined under MCL 125.3205 Sec. 205 (3) and there are considerable health risks, in the opinion of neighboring residents the risks completely outweigh the non-benefit.

Having focused on the harm silica dust does to humans, the same needs to be noted about the local wildlife. Further, local organic farming would also be disrupted as the strict protocols of being organic are unavoidably, unfairly, and unjustifiably violated. Even on a 'calm' day, over 55-square miles are put at risk. Kick the wind up to 'average' speed and the number jumps to over 176-square miles.

It is abundantly obvious that allowing the operation of an open pit gravel mine would create uncontrolled crystalline silica dust.

Beyond the flood of studies readily discoverable online and the recently adopted push by OSHA to protect workers, this report clearly outlines the very serious consequence that would result from granting the requested special use permit. It fulfills the requirement of defining a 'very serious consequence' under MCL 125.3205 Sec. 205 (5)(e)

*"The impact on other identifiable health, safety, and welfare interests in the local unit of government."*

**But It's Just a Small Operation – Yeh, Right!** Getting one's foot in the door appears to be a standard ploy. There are dozens (if not hundreds) of stories about little mining operations that were never supposed to grow much bigger — but did — and did so quickly. Here's just one of those stories.

Downstate in Grass Lake Township, just 25 miles west of Ann Arbor, the Bohne Road Gravel Mine started as a little operation.



## Crystalline Silica Dust — The Invisible Killer

The local farmer was granted a special use permit to mine sand on his land for his own use on his farm. No big deal, right?

Then the farmer sells his farm to a company that expands the mine's operation into gravel extraction — hey, the special use permit said sand and gravel, not 'just sand.' The mine grew quickly. So did the problems.

In addition to the quality of life disruption and property devaluation experienced by the gravel mine's neighbors, crystalline silica dust became problematic. As some residents shared with their planning commission<sup>12</sup>

*"...the dust issue is a HUGE factor here."*

*"The gravel pit is a serious health risk."*

*"...my windows haven't been open since the mine was started."*

*"There is dust all over the plants and trees in the yard as well as the house and car on a daily basis."*

*"The dust is a nightmare!! It's constantly in the air..."*

*"We are concerned for the health of our family, my daughter and I have severe asthma ... we will have to continue to wear our masks to try and keep the contaminants out of our lungs. Why do we have to suffer?"*

*"There is overwhelming evidence regarding longterm silica dust exposure and respiratory disease. Residents near Bohne Road gravel pit testified they now suffer from respiratory diseases such as asthma and COPD."*

*"Why should the residents be subjected to all these issues from this gravel pit?"*

The last comment raises a great question.

Figure 6 – Crystalline Silica Dust Inside a Home (near the Bohne Road Gravel Mine)



As the years passed, the gravel mine was sold to its new owner who now wants to expand operations even further. What was once a 'little private sand mine' has turned a community upside down with a full-blown gravel mining as shown in the pictures of Figure 7 on the next page.

### Don't Tell Us It Can't Happen Here!

It could. Far too easily it could. Need or benefit of this gravel mine does not exist. The damage to the community would be devastating and permanent. The HJPC has evidence of very serious consequences which it can utilize to equitably and justifiably deny the requested special use permit. Crystalline silica dust is perhaps the most compelling of all very serious consequences.

<sup>12</sup> Excerpts from a private Memorandum from Dr. Sandra McCoy, December 3, 2019, full memorandum in Appendix D

### Crystalline Silica Dust — The Invisible Killer

**Figure 7 – Bohne Road Gravel Mine, Grass Lake Township, Michigan**





### Conclusion

To the communities' knowledge, Mr. Leman has failed to provide credible evidence that there is a need for more gravel production in Benzie County. With over a dozen-and-a-half gravel mines within 2 – 12 miles with at least two being major operators, supply far exceeds demand.

To underscore Mr. Leman's apparent lack of market awareness, in his September 12, 2019, TV 7&4 News interview, he states

*"People want to move to our area and the demand for construction materials is certainly there. Sand and gravel from our community means you don't waste fuel and truck this stuff in from a long ways away. They can get it right down the street."*

First, as noted in the newly formed Inland Township Planning Commission's November 27, 2019 draft Master Plan, as reported by the official U.S. Census, Inland's population has fallen 8.6% since 2010. People certainly may want to move here, but the official numbers suggest they aren't doing so. "Demand for construction materials is certainly [here]" — and it is being more than sufficiently met by existing operators. More gravel mines in our area are *not* needed.

Second, there isn't much building going on 'right down the street' from this 150-acre Rural Residential parcel. Even with the horrible mileage a gravel truck gets, given the close proximity of existing gravel mines, any theoretical savings on 'wasted fuel' is meaningless.

Mr. Leman's hasn't and likely can't justify that mining at this Rural Residential

property would produce revenue of a sufficient enough level that he could reasonably expect to operate at a profit, a requirement under Michigan's Zoning Enabling Act, MCL 125.3205 Sec. 205 (3). In the opinion of many, under this act, this lack of profitability precludes finding value in the gravel on that property.

Even if there were valuable minerals to be found there — a hypothetical, not an acknowledgement — the HIJPC must, as required under Michigan's Zoning Enabling Act, balance that value against the very real health issues extracting it would create.

Clearly stated in MCL 125.3205 Sec. 205 (5)(e) and supported by OSHA, MIOSHA, scores of other reputable organizations, and health experts worldwide, the dangers of crystalline silica dust definitely creates a 'very serious consequence' that would

*"impact on other identifiable health, safety, and welfare interests in the local unit of government."*

The residents of Inland Township and Benzie County would be unduly and unnecessarily punished if the special use permit for parcel 08-006-007-00 were approved.

For the negative financial impacts it would impose on local property values, granting a special use permit would be unfair. For the unavoidable health problems it would unleash, such a decision would be downright cruel.



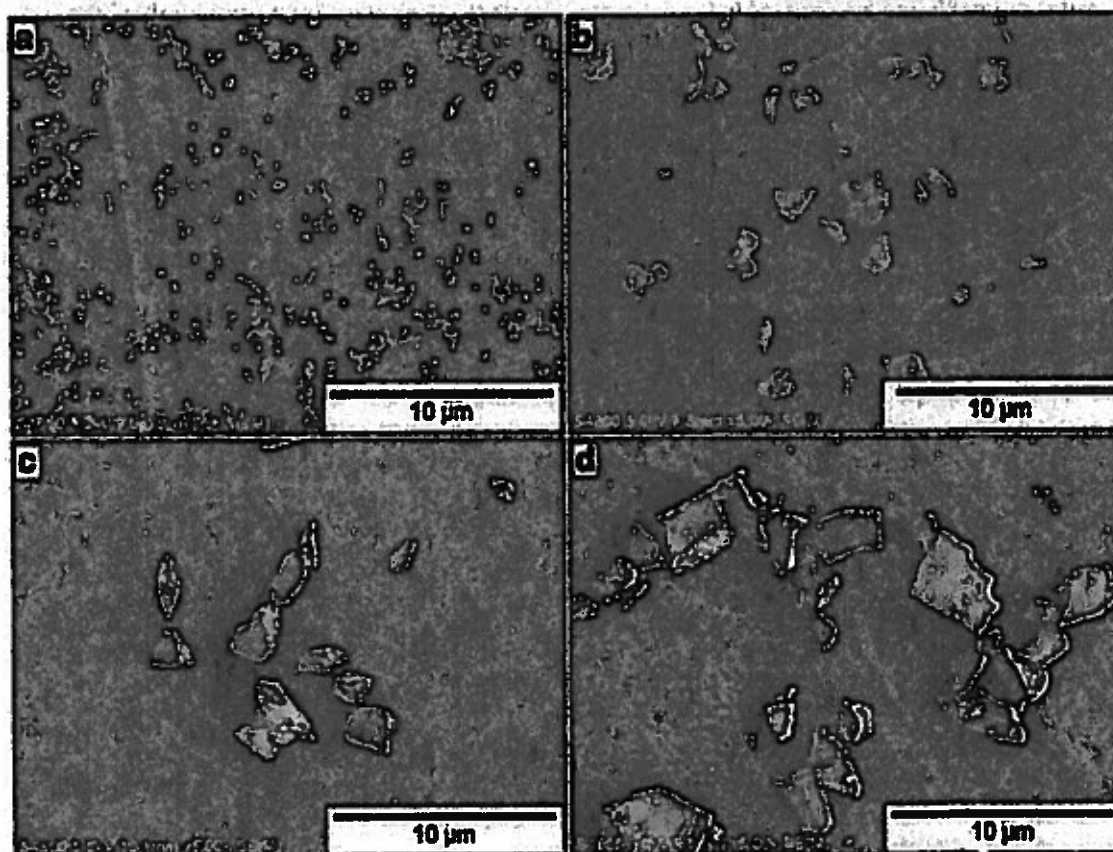
## Appendix A

**5,000x Images of Crystalline Silica Dust**

These electron microscope images of the crystalline silica dust sort their sizes from 'ultra-fine' (as small as  $0.01\mu\text{m}$ ) to 'course' (up to  $7\mu\text{m}$ ). For reference,  $10\mu\text{m}$  is the typical width of a human hair, represented here as the graphic insert of each image.

At sizes of  $5\mu\text{m}$  and smaller, these microscopic razor blades are not only invisible, they are respirable. That is, when inhaled, they bypass all immune system defenses and can travel all the way to the deepest parts of the human lungs. There they *permanently* imbed themselves and begin creating their havoc on one's health.

As reported here and recognized by the medical community around the world, crystalline silica dust is deadly. It causes silicosis (an *incurable lung disease* that leads to disability and death), lung cancer, COPD (Chronic Obstructive Pulmonary Disease), kidney disease, renal disease, and auto-immune diseases such as rheumatoid arthritis.



Comparison of SEM Images of the four sizes of crystalline silica particles used for this study, (a) Ultrafine (UF), (b) Submicron (S), (c) Respirable (R), and (d) Coarse (C). Images are all at the same magnification (5,000x)

SOURCE: S.E. Mischler et al, *Differential activation of RAW 264.7 macrophages by size-segregated crystalline silica*, Journal of Occupational Medicine and Toxicology, DOI 10.1186/s12995-016-0145-2, December 15, 2016





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## OSHA Approved Silica Training



MAA and MTA has partnered with Wayne State University to offer Respirable Crystalline Silica training.

This program was developed through an OSHA Susan Harwood Training Grant and is designed for the construction industry (construction professionals including but not limited to workers, site superintendents, project managers, safety managers) to increase workers' awareness of the serious health hazards of silica dust and provide the knowledge necessary for employee protections.

The training covers the new OSHA Standard on Respirable Crystalline Silica (29 CFR 1926.1153) and it aims to increase workers' awareness on the serious health hazards associated with silica exposure and provide the knowledge necessary to perform work safely when there is silica exposure and ways to limit silica exposure.

Trainees who complete all the training steps will be eligible to receive a certification.

The cost for the training is provided by funds from the grant but space is limited (max 50), so if you are interested please contact the MAA office to register. Space will be filled on first come basis.

Training dates and locations are as follows:

All training times will be from 10:00 am to 12:00 pm.

December 12, 2019

Michigan CAT

Grand Rapids, MI

December 18, 2019

AIS Construction Equipment - Lansing

3600 N Grand River Ave

Lansing, MI 48906

For more information about these sessions, please click here.


([https://gallery.mallchtmp.com/d250bd5a823dc5dd5e1625052/files/76fc3d95-753e-44ad-9b3a-b1ae46de08bf/5-1\\_Silica\\_Training\\_Marketing\\_Flyer.pdf](https://gallery.mallchtmp.com/d250bd5a823dc5dd5e1625052/files/76fc3d95-753e-44ad-9b3a-b1ae46de08bf/5-1_Silica_Training_Marketing_Flyer.pdf))

If you have any questions, please contact the MAA office at 517-381-1732

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## Appendix B (p.2)


**OSHA SUSAN HARWOOD GRANT  
RESPIRABLE CRISTALLINE SILICA SAFETY TRAINING**

## In-Class Silica Safety Training for Construction Industry

*Effective October 23, 2017, OSHA has been fully enforcing all appropriate provisions of the Silica in Construction standard.*



**Our OSHA APPROVED TRAINING MATERIALS** were developed under an OSHA Susan Harwood training grant and designed for the construction industry to increase workers' awareness of the serious health hazards of silica dust and provide the knowledge necessary for employee protections.

*This training is for all the construction professionals including but not limited to workers, site superintendents, project managers, safety managers and employers.*

*If you are interested in an in-class training for your company or organization, please contact one of the training coordinators below to schedule a session.*


**Training Session Scheduling or for More Information**

**Please Contact**

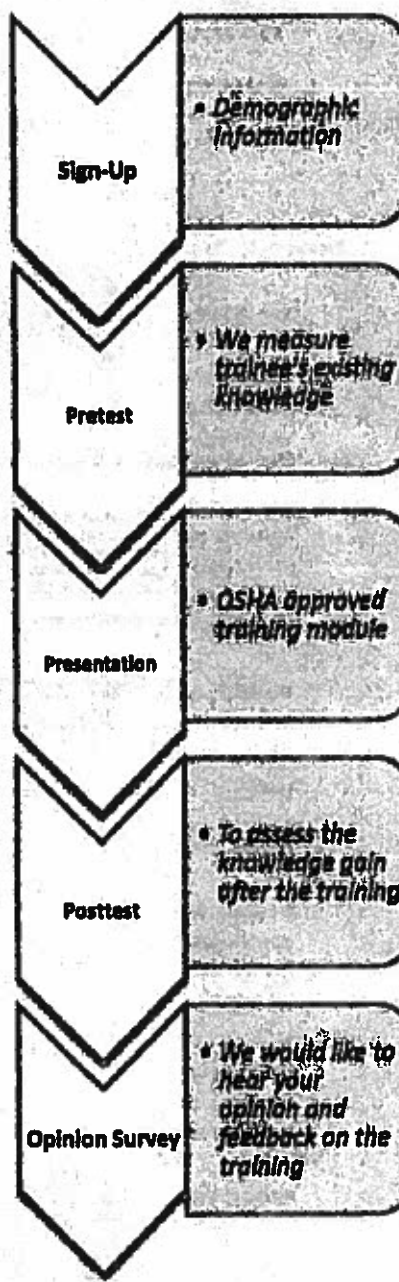
**Mumtaz A. Usman, PhD, PE**  
e-mail : [musmen@eng.wayne.edu](mailto:musmen@eng.wayne.edu)  
Phone: (313) 577-3608

**Emrah Kazan, PhD**  
e-mail: [ekazan@wayne.edu](mailto:ekazan@wayne.edu)

**TRAINEES WHO PARTICIPATE in and complete the whole training will receive a certificate.**

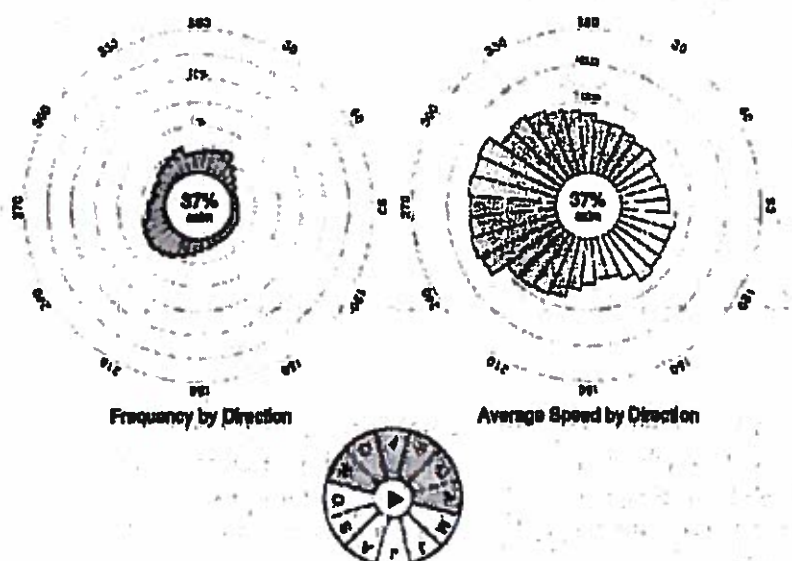


**Training contact hours:**  
**1.5 to 2 Hours**



*This material was produced under a grant (SH-05039-SH8) from the Occupational Health Administration, U.S. Department of Labor. It does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does the mention of trade names, commercial products, or organization imply endorsement by the U.S. Government.*

## KTVC: Cherry Capital Airport

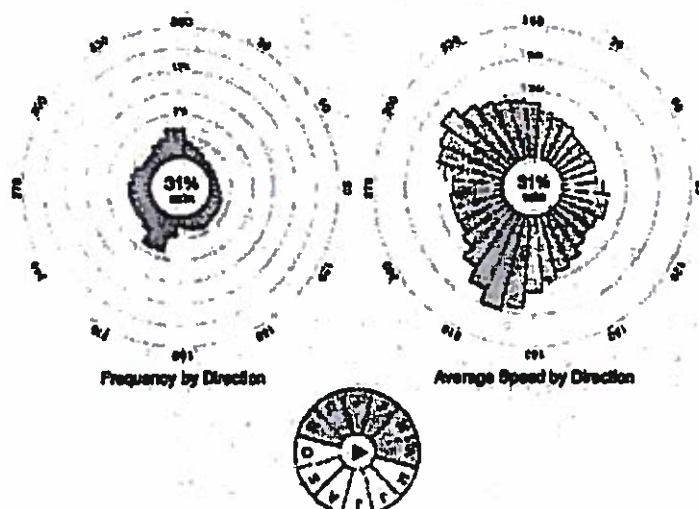


44.7438, -85.5485 WeatherSpoke Wunderground VFRMap FlightFinder NavMonitor

A diagram of the prevailing winds at KTVC: Cherry Capital Airport. The blue diagram at left is a wind rose; the bar length shows the frequency of winds from each direction. In the red diagram at right the bar length shows the average speed of winds when they come from that direction. For more information, see about this site.

WindHistory. Copyright © 2011 Doodah LLC, LLC. All rights reserved.

## KFKS: Frankfort, Frankfort Dow Memorial Field Airport



## STATION VIEW



The station view shows the prevailing winds for a single weather station. Above is an example image for KSPC, San Francisco airport.

The blue diagram at left is a classic Wind Rose. The length of each bar is proportional to the frequency the wind comes from each direction and the color is proportional to the average speed. At KSPC the wind is pretty much always from the west. The most common direction is 280°, 10% of the time with an average speed of 15kts.

The red diagram at right shows the same data as the wind rose but emphasizes wind speed. Bar length is proportional to average speed and color is proportional to frequency. At KSPC northeast winds are rare, and when they come they tend to be light. The strongest winds come from 270°, 15kts 11% of the time.

You may hover the mouse over a bar to see exact textual data. In both diagrams the percentage in the middle indicates how often the winds are less than 6 knots (KTS at KSPC). There are links on the station page for further information. WeatherSpoke is a particularly nice complementary site showing historical weather.

## MONTH FILTER

The month filter allows you to display prevailing winds for specific months. Click the extendor wedges to toggle each specific month off and on. Click the play button in the middle to animate your selection through the year.



## DATA

The source data for these graphs is the NOAA archive. METARs from 2000 to 2010 were parsed and crunched to calculate average winds for each weather station. Reporting variance and data processing errors mean these diagrams are not true statistical samples.

## BROWSER COMPATIBILITY

This site makes extensive use of SVG for graphics. It should work fine in modern versions of Firefox, Safari, Mobile Safari, Chrome, and Microsoft Internet Explorer 9. It will not work in IE 6, 7, or 8 and never will.

## FEEDBACK

This site is a labour of love; feedback and suggestions are most welcome. Please mail [scoperneto@windhistory.com](mailto:scoperneto@windhistory.com) with any thoughts you have. Some planned enhancements include showing winds for specific months and showing more detailed histograms.

SOURCE: Weather Underground [wunderground.com](http://wunderground.com) reported data from NOAA (National Centers for Environmental Information) National Oceanic and Atmospheric Administration

## MEMORANDUM

TO: Jim Brouwer, Friends of Platte River Watershed

FROM: Sandra McCoy, Ph.D.

DATE: December 3, 2019

RE: Bohne Rd Gravel Mine, Grass Lake, Michigan

Jim,

I moved to Grass Lake Township, Michigan 1-1/2 years ago. Grass Lake is a small town, about 25 minutes West of Ann Arbor. It has a delightful "rural" character and that is what draws many people to settle here. Grass Lake Township has been embroiled in conflicts for many years concerning the incursion of gravel mining into residential areas in our community.

I am pleased to provide some excerpts from letters written by the residents of Grass Lake Township to their Township government over the past several years concerning the Bohne Rd gravel mine which has operated since 2003. These letters were obtained through a FOIA request. Also included are excerpts from Grass Lake Planning Commission meeting minutes. Many of the comments illustrate the negative effects of dust and health concerns related to mining operations in close proximity to residential areas.

"We purchased 5-1/2 acres of land... in 1999 to build our final dream home. Since the start of the sand extraction operation... in August, 2003, our lives have been totally disrupted and our land value has definitely gone down."  
"Needless to say the dust issue is a HUGE factor here. The day they were doing this our whole house and deck were covered with dust and still is. I can't even open my windows. These big earth movers were coming by our property every 10 minutes and the noise and dust was unbearable."

"Gravel pits in residential areas undoubtedly cause health and safety concerns and much disturbance for surrounding residents... The gravel pit on Bohne Road as currently operating provides no benefit to Grass Lake Township... We need to consider the more than 200 people that live within a 2 mile radius of the gravel pit with many living within 50-100 feet of pit operations. These people have stated they now must close their windows due to the dust created by gravel pit operations. This certainly is not a desirable condition for them and we can and must protect the value of our homes, the environment and keep our township a safe place to live in."



"The gravel pit is a serious health risk. There are no six foot trees on the berm to eliminate dust. Many people have not been able to walk in the area as a result of the extreme dust and probable air-borne, dangerous silica. There is no monitoring for silica contamination in the air and in the well water." "There has been no MDEQ study done prior to the original SUP to check for environmental health hazards and issues, including aquifer and water table contamination (well water contamination) and negative wildlife issues."

"I would have my windows open to let the fresh air in... Now my windows haven't been open since the mine (then called gravel pit to make it sound smaller and unobtrusive) was started. There is dust all over the plants and trees in the yard as well as the house and car on a daily basis. Inside my house, a layer of dust accumulates within a few days. I don't work in the yard anymore or hang my clothes outside... I've become a prisoner in my home which is supposed to be an enjoyable, safe haven and an investment."

"We live in a log home on Sager road that we built in 2000 and it was supposed to be our dream home." "We couldn't even open our windows at all and still can't. The dust is a nightmare! It's constantly in the air... and it's destroyed the finish on our home & decks and we have to clean it multiple times in a year now versus every 4-5 years." The biggest and closest to me is being diagnosed with a blood cancer called Multiple Myeloma. I went thru chemo for 9 months twice a week and had a stem cell collection. It's been the hardest 2 years of my life!! I asked my dr. at the UpM cancer center what is the cause of Multiple Myeloma?? He said there is a connection from diesel fumes in the air. There are diesel trucks running all day long right behind my house since they opened this sand mine around 2001 or 2002. So this has been going on for around 17 years now."

"We are concerned for the health of our family, my daughter and I have severe asthma and are worried over the silica dust among other gravel pit issues that has caused our asthma to be in a constant state of flux. We are concerned with the location of the gravel pit being so close to our property and our well that we use for water. We don't want our well to be contaminated... We unfortunately are not in a position to move, so we will continue to keep our doors and windows shut, continue to have our house vents, ac and heat checked for contaminants that the gravel pit puts upon us, we are not able to enjoy sitting outside on our deck, swimming in our pool and we will have to continue to wear our masks to try and keep the contaminants out of our lungs. Why do we have to suffer?"

"There is overwhelming evidence regarding longterm silica dust exposure and respiratory disease. Residents near Bohne Road gravel pit testified they now suffer from respiratory diseases such as asthma and COPD."

## Appendix D (p3)

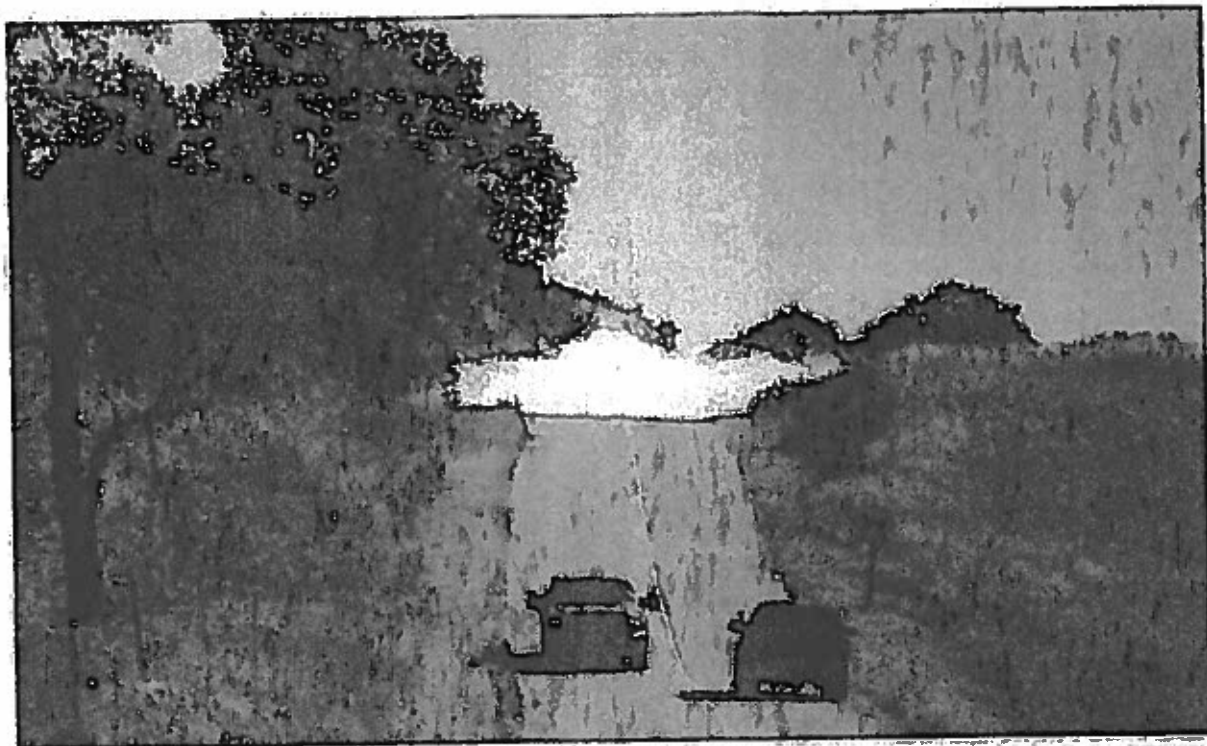
"The site alone is appalling with the noise, dust, contamination of the stream near the gravel pit, the pond, wildlife absent and natural resources. Why is this gravel pit still in operation, from failing to comply with the agreement from 21 March 2018?" "Why should the residents be subjected to all these issues from this gravel pit?"

"8/15/19 1.33pm to 1.40pm, while my husband and I were driving along Bohne Rd, Grass Lake, right near the Bohne Rd Gravel Pit. The dust was so bad we had to pull over on to the side of the road because we couldn't see in front of us." "No only is this mine dangerous to any vehicle who happens to travel along Bohne Rd, the health issues caused by the dust and diesel fumes are catastrophic."

I think the issue is best summed up by one Bohne Road resident in a letter to the Township, urging them not to renew the mine permit:

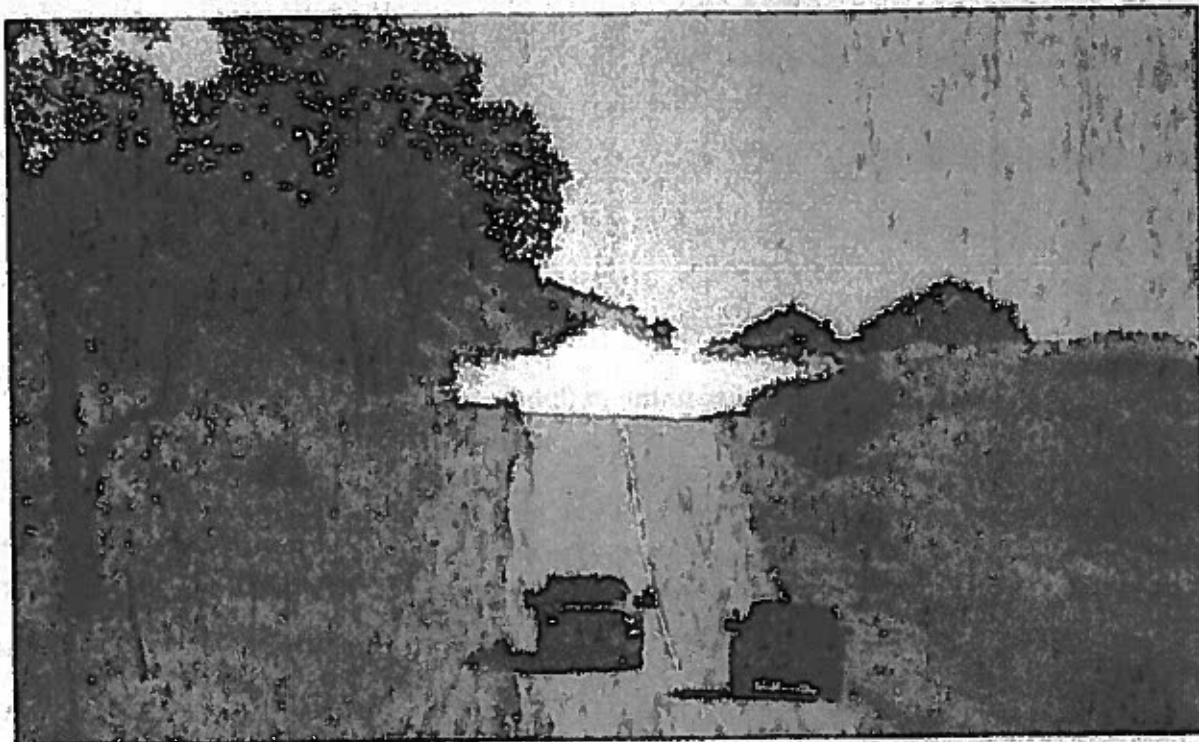
"The residents need to be able to open their windows, sit outside, children need to play outside, they need sleep, they need peace and quiet, most importantly, they need to breathe, be healthy, and they need to smile and dream again."

*Mcloy*





## Appendix D (p4)





[Home](#) → [Medical Encyclopedia](#) → Silicosis

URL of this page: [//medlineplus.gov/ency/article/000134.htm](https://medlineplus.gov/ency/article/000134.htm)

## Silicosis

Silicosis is a lung disease caused by breathing in (inhaling) silica dust.

### Causes

Silica is a common, naturally-occurring crystal. It is found in most rock beds. Silica dust forms during mining, quarrying, tunneling, and working with certain metal ores. Silica is a main part of sand, so glass workers and sand-blasters are also exposed to silica.

Three types of silicosis occur:

- Chronic silicosis, which results from long-term exposure (more than 20 years) to low amounts of silica dust. The silica dust causes swelling in the lungs and chest lymph nodes. This disease may cause people to have trouble breathing. This is the most common form of silicosis.
- Accelerated silicosis, which occurs after exposure to larger amounts of silica over a shorter period of time (5 to 15 years). Swelling in the lungs and symptoms occur faster than in simple silicosis.
- Acute silicosis, which results from short-term exposure to very large amounts of silica. The lungs become very inflamed and can fill with fluid, causing severe shortness of breath and a low blood oxygen level.

People who work in jobs where they are exposed to silica dust are at risk. These jobs include:

- Abrasives manufacturing
- Glass manufacturing
- Mining
- Quarrying
- Road and building construction

- Sand blasting
- Stone cutting

Intense exposure to silica can cause disease within a year. But it usually takes at least 10 to 15 years of exposure before symptoms occur. Silicosis has become less common since the Occupational Safety and Health Administration (OSHA) created regulations requiring the use of protective equipment, which limits the amount of silica dust workers inhale.

## Symptoms

Symptoms include:

- Cough
- Shortness of breath
- Weight loss

## Exams and Tests

Your health care provider will take a medical history. You'll be asked about your jobs (past and present), hobbies, and other activities that may have exposed you to silica. The provider will also do a physical exam.

Tests to confirm the diagnosis and rule out similar diseases include:

- Chest x-ray
- Chest CT scan
- Pulmonary function tests
- Tests for tuberculosis (TB)
- Blood tests for connective tissue diseases

## Treatment

There is no specific treatment for silicosis. Removing the source of silica exposure is important to prevent the disease from getting worse. Supportive treatment includes cough medicine, bronchodilators, and oxygen if needed. Antibiotics are prescribed for respiratory infections as needed.

Treatment also includes limiting exposure to irritants and quitting smoking.

People with silicosis are at high risk for developing TB. Silica is believed to interfere with the

body's immune response to the bacteria that cause TB. Skin tests to check for exposure to TB should be done regularly. Those with a positive skin test should be treated with anti-TB drugs. Any change in the appearance of the chest x-ray may be a sign of TB.

People with severe silicosis may need to have a lung transplant.

## **Support Groups**

Joining a support group where you can meet other people with silicosis or related diseases can help you understand your disease and adapt to its treatments.

## **Outlook (Prognosis)**

Outcome varies, depending on the amount of damage to the lungs.

## **Possible Complications**

Silicosis can lead to the following health problems:

- Connective tissue disease, including rheumatoid arthritis, scleroderma (also called progressive systemic sclerosis), and systemic lupus erythematosus
- Lung cancer
- Progressive massive fibrosis
- Respiratory failure
- Tuberculosis

## **When to Contact a Medical Professional**

Call your provider if you suspect that you have been exposed to silica at work and you have breathing problems. Having silicosis makes it easier for you to develop lung infections. Talk to your provider about getting the flu and pneumonia vaccines.

If you've been diagnosed with silicosis, call your provider right away if you develop a cough, shortness of breath, fever, or other signs of a lung infection, especially if you think you have the flu. Since your lungs are already damaged, it's very important to have the infection treated promptly. This will prevent breathing problems from becoming severe, as well as further damage to your lungs.

## **Prevention**

If you work in a high-risk occupation or have a high-risk hobby, always wear a dust mask and do not smoke. You might also want to use other protection recommended by OSHA, such as a

3

respirator.

## Alternative Names

Acute silicosis; Chronic silicosis; Accelerated silicosis; Progressive massive fibrosis; Conglomerate silicosis; Silicoproteinosis

## References

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Tarlo SM. Occupational lung disease. In: Goldman L, Schafer AI, eds. *Goldman-Cecil Medicine*. 26th ed. Philadelphia, PA: Elsevier; 2020:chap 87.

## Review Date 5/30/2021

Updated by: Denis Hadjiladis, MD, MHS, Paul F. Harron, Jr. Associate Professor of Medicine, Pulmonary, Allergy, and Critical Care, Perelman School of Medicine, University of Pennsylvania, Philadelphia, PA. Also reviewed by David Zieve, MD, MHA, Medical Director, Brenda Conaway, Editorial Director, and the A.D.A.M. Editorial team

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**From:** [Blankenship, Johni](#)  
**To:** [Warner, Avery](#)  
**Subject:** FW: <EXTERNAL-SENDER>Amendments to Material Site Ordinance  
**Date:** Tuesday, September 6, 2022 9:03:27 AM  
**Attachments:** [Bilben Amendments \(dragged\) 2.pdf](#)  
[Definitions Amendment 96.pdf](#)  
[Decision.pdf](#)  
[Standards Amendment.pdf](#)  
[Delete Effect of Denial.pdf](#)  
[type of CLUP Amendment 96.pdf](#)  
[Tsunami Zone Amendment.pdf](#)  
[Buffer Zone Amendments 06.pdf](#)  
[Conditions Amendments 96.pdf](#)

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## Public comment

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**From:** Hans Bilben <catchalaska@alaska.net>  
**Sent:** Monday, September 5, 2022 8:18 PM  
**To:** Blankenship, Johni <JBlankenship@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Amendments to Material Site Ordinance

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

Hi Johni,

Please forward these amendments to assembly members, legal, and planning director. Also, please plan to project attachments in sequence to the screen as I am speaking to the Committee of the Whole tomorrow. Let me know if there is any technical issues in doing that, and I will try to adjust accordingly..

Thanks,

Hans Bilben

1 of 11

## **Does Visual Impact really matter??**





## **21.29.050 (A)(1) Buffer Zone (5 amendments)**

**1st** amendment is to replace (1)(a) with:

a. The buffer zone for counter permits and CLUPs shall be of sufficient height, density, and setback to provide visual and noise screening of the proposed use to parcels in the vicinity as deemed appropriate by the planning commission or planning director (as applicable). Buffer requirements shall be made in consideration of and in accordance with existing uses of properties in the vicinity at the time of approval of the permit. There is no requirement to buffer the material site from uses which commence after the approval of the permit.

**2nd** amendment would replace 21.29.050(A)(1)(b)  
**Existing (b) becomes (c) etc.**

b. A buffer zone shall be established between the area of excavation and the parcel boundaries. The buffer zone for a Counter Permit and a Type 1 CLUP shall consist of one or any combination of the following: Fifty feet of natural vegetation, a minimum six-foot fence, a minimum six-foot earthen berm with a minimum 2/1 slope. The buffer zone for a Type 2 or a Type 3 CLUP shall consist of the following: Minimum

eight-foot fence, or fifty feet of natural vegetation and a minimum ten-foot earthen berm with a minimum 2/1 slope.

**3rd** amendment would change wording in existing 21.29.050(A)(1)(d) (now e.) to:

e. This requirement may [ONLY] be waived upon a finding by the planning director or planning commission, as applicable, that a lot line where the waiver is requested is [DIRECTLY ADJACENT TO] adjoining another material site or industrial use.

**4th** amendment is to add a new paragraph 21.29.050(A)(1)(f).

f. Geographic Information System (GIS), Photogrammetry, and LIDAR technology may be utilized in the design of the buffer zone when differing elevations exist between the proposed site and properties in the vicinity. Using this technology, line of sight profile drawings from the uppermost inhabitable level of existing properties located in the vicinity may be utilized in the determination of sufficiency of the buffer zone.

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**5th** amendment is to add another new paragraph to 21.29.050(A)(1)(g).

g. At its discretion the planning director or planning commission, as applicable, may waive or reduce buffer requirements when screening proves to be not necessary or not feasible.

## Four amendments to amend 21.29.050. Permit Conditions

### 1st — Deleting Discretionary Conditions 21.29.050(B)(1)(a).

If GIS and LIDAR technology is utilized the buffer zone will be defined under (A)(1). Setting a maximum of 100 feet would deny protections laid out in Standards in some cases. One size does not fit all!!

\*\*\*Justification for this amendment is that if the buffer zone is designed correctly by using evidence and technology there is no need for this discretionary condition. The tools, and the discretion, for the correct design are spelled out in amendments which I have written to the buffer zone language.

### 2nd — Amend 21.29.050(B)(1)(i) to read:

i. Upon request of the applicant [IN LIEU OF ANY ADDITIONAL BUFFER AREA THIS SUBSECTION DESIGNED TO SEPARATE THE USE OF MATERIAL SITE ACTIVITIES FROM NEIGHBORING PARCEL BOUNDARIES, AN EIGHT-FOOT-BERM ABOVE THE PREEXISTING ELEVATION MAY BE CONSTRUCTED PRIOR TO EXCAVATION, AROUND THE EXCAVATION AREA.] an earthen berm with a minimum 2:1 slope of the height determined by the planning commission under KPB 21.29.050 shall be constructed above preexisting elevation around the excavation area. If the excavation site area expands, the berm may move toward [THE PERMITTED BOUNDARY] negatively impacted properties in the vicinity

until such limits of the permitted area are exhausted. The berm must be maintained at [EIGHT-FOOT HEIGHT] the predetermined height while permitted activity is occurring. This earthen berm may be in addition to other buffer zone conditions imposed by the planning commission, or required by KPB 21.29.050.

**3rd — 21.29.050(B)(6)** should be deleted. If enacted, only borough residents living at street level or below will be protected from visual, noise, and dust impacts.

**4th — Amend 21.29.050(2) Discretionary Conditions** to add:

6. *Noise suppression.* At the discretion of the planning commission or planning director (as applicable) multi frequency (white noise) back-up alarms may be required on all equipment and vehicular traffic on site as a condition to help meet the noise impact standard in accordance with and in consideration of existing uses in the vicinity.

Amendment to add new section **KPB 21.29.063. Decision.**

**21.29.063. Decision.**

The planning commission or planning director, as applicable, shall approve permit applications whereby mandatory standards under KPB 21.29.040 have been met through implementation of conditions as set forth in KPB 21.29.050, or shall disapprove applications when the conditions do not meet the mandatory standards in KPB 21.29.040. The decision shall include written findings detailing how the conditions under KPB 21.29.050 meet, or do not meet the mandatory standards set forth in KPB 21.29.040 and evidence to support those findings. The decision shall be distributed to the parties of record before the planning commission, with a notice of right to appeal.

\*\*\* Justification is to give the Planning Commission and the Planning Director direction as they approve, modify, or disapprove an application based upon its compliance with the requirements of the ordinance as currently spelled out in KPB 21.25.050(B). This new paragraph is based upon **"21.29.055. Decision"** as taken from the material site working group document.

Amending **21.29.130 Definitions** to add two items:

**1. Vicinity means 1,000 horizontal feet from the parcel boundary of the proposed earth materials site.**

\*\*\*Justification for this is that in the past the word “adjacent” was often used to determine the extent of protecting neighbors. An adjacent property might be as small as a quarter acre, in which case the property owners further out might be left without adequate protection. An adjacent property might be eighty acres which leaves the applicant at risk because of the planning commission’s interpretation of the ordinance. By having a stated distance it protects both the applicant, and neighboring property owners. The material site working group defined “vicinity” as the notification area meaning 1/2 mile or 2,640 feet. This is a compromise distance.

**2. Earthen Berm means a berm constructed above the preexisting elevation, consisting of topsoil or aggregate, suitable for revegetation, not to contain more than 10% organic material, and maintaining a 2:1 slope on both sides.**

\*\*\*Justification for this is to aid the compliance officer in determining if berms are constructed in a fashion that will meet the standards. A pile of brush with a couple inches of dirt on top is not an adequate protection for properties in the vicinity. A properly constructed berm could provide sufficient noise, visual, and some dust screening for the duration of the project, plus it would aid in the reclamation process.



Section **21.29.065 Effect of permit denial** amended by **DELETION** of entire section.

\*\*\*Justification: There is currently a process in place that allows either party to **appeal** a decision that they feel is unjust. This process may proceed all the way to the Alaska Supreme Court and the final decision rendered, whether it is approval or denial of a permit, should be adhered to. To subject neighboring property owners and KPB to the costs, both in dollars and time spent on a first appeal, only to restart the cycle again in one year or less is ludicrous. In the 16 year history of the current ordinance there has never been a denial that stood up on appeal—**ZERO**—so just who is this written for? Certainly not for the benefit of the vast majority of Borough residents!

Including this section in the ordinance undermines the credibility of the planning commission, the planning director, the entire appeal process, and is the ultimate slap in the face to the residents of this borough who may have successfully (and legally) defended their neighborhood as spelled out in the ordinance.

If the Assembly really thinks that a reapplication is warranted, then the rule for denial should be the same as the rule for approval. If approved a counter permit is good for two years and a CLUP for five years. If denied a counter permit reapplication should not be allowed for two years, and for a CLUP no reapplication for five years. Any reapplication even then should only be allowed if the applicant can prove that new evidence or circumstances exist that were not available or present with the first application.

Amend **21.29.040 Standards for sand , gravel, or material sites.** Two amendments:

**1st—** In **21.29.040(A)** rewrite (A) to include visual impact and to delete reference to street-level screening.

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, visual, and other impacts of earth materials extraction to properties in the vicinity through setbacks and buffer zones. Prior to granting a counter permit or a conditional land use permit under this chapter, the planning director or planning commission, as applicable, must make the following findings:

\*\*\* Justification would be that by only requiring street level visual screening this ordinance will eliminate protections for a segment of the borough population—again going back to the one-size-fits-all model that didn't work in the past.

**2nd—** Include the omitted MatSu standard #2 into **21.29.040.**

2. That the use will preserve the value, spirit, character, and integrity of the surrounding area;

\*\*\* Justification is that this standard (currently in the MarSu ordinance) helps to define just where a material site should and/or should not be located. It is critical if the ordinance is really meant to comply with the Comprehensive Plan.

Amend **21.29.050(A)(2) Permit Conditions applicable to all permits** to read:

**2. Water source separation.** (New paragraph after letter c.)

**d. All permits shall be issued with a condition which prohibits any material extraction within 500 linear feet of any existing private well or water source when located within the boundaries of a mapped tsunami hazard zone**

\*\*\*Justification is to include mapped tsunami Hazard Zones as defined by Alaska DNR, in partnership with the Alaska Earthquake Center and the Alaska Division of Homeland Security and Emergency Management. There are seven such zones in the Kenai Borough. Any excavation in a tsunami hazard zone demands scrutiny because of the potential to turn a material site into a saltwater lake thereby contaminating any wells or water sources in that zone.

**1st** Amend **21.29.020(A)** **Types of permits available** to return Counter permit to current 2.5 acre size, and to retain new language concerning two year time period with one 12 month extension.

\*\*\*Justification: To allow a material site greater than 2.5 acres that would have multiple negative impacts to properties in the vicinity without any prior public input is a great disservice to the residents of the borough and not in accordance with the Comprehensive Plan.

**2nd** Amend **21.29.020(B)(1)(2)(3)** to read:  
Type 1 CLUP. Type 2 CLUP. Type 3 CLUP.

\*\*\*\*Justification: Makes for cleaner reference in remainder of ordinance.

**3rd** Amend **21.29.020(B)(1)** to read:

1. Type 1 CLUP. Earth Materials Extraction with Restricted Processing CLUP. An Earth Materials Extraction with Restricted Processing CLUP is required for any material extraction which disturbs 2.5 or more cumulative acres. Processing is restricted to one portable two deck screen capable of screening or classifying material, limited to a maximum of 500 cubic yards per day. Extraction within four feet of the seasonal high-water table is prohibited under this permit. The conditions set out in KPB 21.29.050 and .055 are applicable to this type of CLUP.

**4th** Amend **21.29.020(B)(2)** to add language dealing with water-table separation.

2. ...or crushing activities. Extraction or processing within four feet of the seasonal high-water table is prohibited under this permit. The conditions set forth....

**5th** Amend the The Type 3 CLUP **21.29.020(B)(3) (Earth Materials Extraction within Water Table)** to include processing in its language. Why wouldn't it??????

**From:** [Blankenship, John](#)  
**To:** [Warner, Avery](#)  
**Subject:** FW: New Public Comment to Assembly Members  
**Date:** Tuesday, September 6, 2022 6:10:37 PM

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**From:** Kenai Peninsula Borough <webmaster@borough.kenai.ak.us>  
**Sent:** Tuesday, September 6, 2022 5:46 PM  
**To:** BoroughAssembly <Borough-Assembly@kpb.us>; Mayor's Department <MayorDepartmental@kpb.us>  
**Subject:** New Public Comment to Assembly Members

**Your Name:** Elena Staab

**Your Email:** [Elena-joy@hotmail.com](mailto:Elena-joy@hotmail.com)

**Subject:** Ordinance 2022-36

**Message:**

To the KPB Assembly:

This is to show my support for Ordinance 2022-36. As a property owner that is adjacent to 2 gravel pits that have grandfather rights (Kobuk & Big Eddy/Spruce St. and Greenridge St & Joplin), I am acutely affected by their unregulated operations. I have experienced flooding multiple times in the last 10 years due to their uncontrolled release of water and the absence of ditches and driveway culverts on my road. I live on Greenridge Street.

After reviewing the ordinance, I noticed the lack of a contingency plan for catastrophic failure of their coffer dams. This is my biggest fear, that a wall of water from those dams will make my home unlivable and render me homeless. I have flood insurance, but that only covers flooding from the river in an "act of god" happenstance.

When these gravel pits were granted grandfather rights this was a rural area, only 3 people homesteading. The current and coming population density calls for re-evaluation and an SWPP at the very least. I have discussed these things with my neighbors and we are all in agreement with your ordinance, plus upgrades to our road for flood management are necessary. I appreciate your time and consideration.

Sincerely,  
Elena J. Staab

Kenai Peninsula Borough Assembly  
144 N. Binkley Street,  
Soldotna, Alaska 99669

Re: Comments Regarding Proposed KPB Ordinance 2022-36

Dear Assembly Members:

We are writing to you regarding the new proposed Ordinance 2022-36, amending KPB Chapter 21.25 and Chapter 21.29. There are certain truths related to gravel pits:

- 1) No one really wants one as a neighbor
- 2) They are for the most part noisy and dusty
- 3) They have a negative visual impact to surrounding homes and neighborhoods
- 4) We all need gravel and sand for our lives we enjoy on the Peninsula
- 5) We all want our families and children to be safe from gravel pit operations
- 6) We all know, to be safe, we need reasonable Borough regulations that protect both the public welfare while helping the gravel industry sustain their businesses.
- 7) We all want gravel and sand at a fair price

The key takeaway from these truths is, "reasonable Borough regulations" for gravel pit operations.

The new proposed Ordinance 2022-36 does move us in the right direction, however, some of the above truths we can agree on have been overlooked or not given the weight they should have.

For example, 21.29.015 (C) now allows a Counter Permit to be 10 acres. A square 10 acre gravel pit would be about 14, 150 foot square residential lots. By any standard, this would be a huge gravel pit. It should be left at 2.5 acres. This new regulation also strips out any public safeguards from all the concerns listed in 1) thru 3) above. Delete this amended version and add back the current language under 21.29.020 (B). But add that Counter Permits must meet public notice requirements of 21.25.060. Also, delete exception given to public notice for Counter Permits under this section.



The public should have the right to examine any proposed gravel pit in their area and be able to discuss it with the Planning Commission.

In the new regs 21.29.040 "Standards for sand, gravel, or material sites", the new amendment is striped of any meaningful language that would allow the Planning Commission to exert their authority in denying a gravel permit. In fact, under this section, and others similar, the Planning Commission will almost have to approve any and all gravel pit applications. The new amendment as written, fails to address most of the above truths we all share about the need for the public's protections from gravel pit operations. The current, existing section of 21.29.040 in its entirety should be left in place as written.

Regarding Item 3) above, about visual impact, the amendment 21.29.040 has set the limit of visual impact to only "street-level visual screening". This restriction of the height of screening to protect properties surrounding a proposed gravel pit does not take into account screening for two story homes, much less, homes on a hill side above a proposed gravel pit. Delete "street-level screening" from this section. And, address visual screening by adding back the current standards in the existing regulations under 21.29.040 (A) (1 thru 6).

Under item. 2) above, regarding dust from gravel pit operations, Eileen Sheridan will be offering an Amendment to 21.29.040 related to dust from quartz and silica that is found in all types of rock and sand mined on the Kenai Peninsula. I took a shovelful of gravel that came from a known gravel pit source in Anchor Point and found it laced with minute particles of silica. The winds pick up the fine silica particles from gravel pit operations and they are blown into surrounding areas. Silica is a known cause of silicosis, respiratory illnesses, cancer and death for humans if breathed in for long periods of time. I urge you all to listen to Eileen's presentation and take time to read the material she's gathered on this important subject. Please pay particular attention to the table on Page 3 of "Crystalline Silica Dust-The Invisible Killer" section. It shows that small silica dust, small enough to enter our immune system can travel 4.5 miles in a 6.2 mph wind. Most gravel people don't seem to understand the long term effects of working around gravel operations and fail to take any precautions themselves. OSHA has issued strong warnings and advisories for people who work around silica dust. Its time we take notice too, and adjust our materials regulations to protect our residents and the public.

There's much more that needs to be addressed in the proposed amendments and we hope to have another chance to do so. This is a big deal for not only the residents and public but very important for our gravel producing neighbors on the Peninsula as well. So, we hope you will take time to weigh all the pros and cons carefully to arrive at fair and workable regulations for us all.

Lastly, we want to encourage you to carefully review and act on Hans Bilben's amendments he has submitted. Hans is a very honest, fair-minded man. He has been working closely with Ed Martin, one of the gravel interest leaders to try to work out language in the proposed new amendments that would work for all of us, both residents and the public, and the folks with gravel interests. We support Mr. Bilben's amendments.

Thank you for considering our views.

Gary and Eileen Sheridan

PO Box 661,  
Anchor Point, Alaska 99556

KPB Ord. 2022-36



**From:** [Blankenship, Johni](#)  
**To:** [Warner, Avery](#)  
**Subject:** FW: <EXTERNAL-SENDER>Cline response - Kenai Peninsula Borough Ordinance 2022-36  
**Date:** Monday, September 12, 2022 5:00:09 PM

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## Public comment on Material Site Ordinance

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**From:** Ann Cline <anndotcalm@gmail.com>  
**Sent:** Monday, September 12, 2022 4:48 PM  
**To:** Blankenship, Johni <JBlankenship@kpb.us>  
**Cc:** Hans and Jeanne Bilben <Catchalaska@alaska.net>  
**Subject:** <EXTERNAL-SENDER>Cline response - Kenai Peninsula Borough Ordinance 2022-36

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

Good afternoon,

At last week's KPB Assembly meeting, the ordinance regarding CLUPs was discussed. After I spoke at the meeting, I gave my name and phone number to you and several of the Assembly to offer my assistance in the ordinance's revision. Johni, please forward this to all Assembly members and Planning Department.

I have several clarifying points which hopefully will result in a clear, easy to follow document to assist landowners and the public regarding land use and material site permits with protections. I am using the amended Ordinance 2022-36 with the new text. Please let me know if I may be of further assistance.

[1]. I was unable to locate where the ordinance stipulates how many acres can be permitted per parcel. What is to prevent a landowner from having 1 acre permitted, another acre permitted a year later, another acre permitted the following year, and so on till he/she has excavated all the acres they would like? Should the ordinance stipulate 1 acre **per parcel**? If the Borough allows short platting, then that's another loophole that needs to be addressed. Otherwise, a landowner could shortplatt his/her parcel into 1 acre parcels and permit them individually.

[2] I don't see the necessity of KPB offering a Counter Permit. It seems to me that a CLUP is sufficient. I didn't see any difference in the 21.29.020 A. Counter Permit description. What am I missing?

[3]. Under 21.29.020 B. Conditional Land Use Permit, 1. states "an Earth Materials Extraction CLUP is required for any material extraction which disturbs 10 or more cumulative acres." My Anchor Point neighbors and I respectfully exhort you to replace the number 10 with 1 to read:

"an Earth Materials Extraction CLUP is required for any material extraction which disturbs more than 1 acre."

[4] I was unable to find the requirements of a public hearing for any CLUP request in excess of 1 acre. A public hearing is very important to ensure that affected Kenai Peninsula Borough residents have an

opportunity to inform planners and stakeholders of concerns regarding health, safety, and welfare of the surrounding residents, tourists, and business owners.

[5] Regarding 21.29.030. Application procedure A:

Delete “a counter permit or” if you determine that only a CLUP is sufficient.

[6] Regarding 21.29.040. A:

Delete “street level” and replace with “visual screening from all affected surrounding areas within 1/2 mile.”

[7] Regarding 21.29.060 - Reclamation plan:

Asking for a bonding requirement of \$750 per acre for reclamation is completely unrealistic. Just to bring in the equipment necessary to do the work far exceeds that price! I suggest you speak with local excavators to obtain an accurate bid on the actual cost to reclaim property and proceed. Remember that unscrupulous landowners will do the least of your demands so you must be diligent and realistic with your legal requirements.

[8] Regarding 21.29.065 A:

A can be deleted if you decide to remove counter permits from the ordinance.

The most important aspect to any ordinance is whether or not it will be enforced. If there are no real consequences for disobedience, then the ordinance is moot. If you are concerned that the KPB planners will have a difficult time bringing landowners into legal compliance with ordinances, then it's imperative that you change your wording from “may” to “must” in your ordinance.

Part of the KPB Planning and Assembly personnel job descriptions should include making a physical visit to the locations of the permits under review. For example, our Anchor Point neighbors have no doubt that if the Assembly and borough Planners had come to our neighborhood to witness for themselves, our lawsuit would have been unnecessary. The Beachcombers LLC gravel pit was/is in full view of, and carcinogenic dust exposure to, our surrounding hillside homes.

As I expressed at the open KPB meeting last week, I believe we all need to be able to sleep each night knowing that we have been honorable and have made righteous decisions not only for our neighbors, businesses, and ourselves but also for **posterity**. We will become dust, but our actions should carry lasting goodness to those we leave behind.

Respectfully,

Ann Cline  
34926 Denver  
PO Box 121  
Anchor Point, AK. 99556  
(425) 449-3540

## Warner, Avery

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**From:** Blankenship, Johni  
**Sent:** Monday, October 3, 2022 9:55 AM  
**To:** Warner, Avery  
**Cc:** Turner, Michele  
**Subject:** FW: <EXTERNAL-SENDER>Gravel pits- to be forwarded, thanks

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**From:** laura sievert <laurasievert@hotmail.com>  
**Sent:** Monday, September 26, 2022 8:03 PM  
**To:** G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Gravel pits- to be forwarded, thanks

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

To the Borough Assembly:

I admit that I haven't been keeping up on Assembly progress on regulating gravel pits.

Listening to Nikiski candidates on the KDLL assembly candidate forum tonight, I gather that most residents have concerns about gravel pits because of the normal nuisances and lowering of adjacent property values, which I agree are problems. However, my primary concern (my property value is forever lowered) is the way that gravel pit operators are trusted to run their pits after they have been approved. The two operators that surround my property - Great Northern and QAP- have bulldozed a salmon stream, stacked up old asphalt on shorelines, dumped derelict machinery, run a batch plant without a permit, and otherwise ignored what is allowed by the Borough.

Below, find my previous letter. I still have the same concerns, which are not being addressed when you only look at residents' common concerns like dust, jake brakes, and unsightly views. My concerns are violations that have repercussions that will last decades and beyond. I am not asking you to address my two gravel pit problems- since it's too late- only that you consider the future.

Thank you - Laura Sievert

I live on Beaver Loop, home to several gravel pits. We live between the Quality Asphalt Pit and the Great Northern pit. Both were old gravel pits that came back into production for the Spur Highway project.

As part of your discussion going forward, I beg you to consider two things: first, how to enforce the rules that pit operators are required to follow, new rules as well as those already in effect such as the Anadromous Stream Ordinance. Also, what is to be the relationship between city and Borough regulations regarding gravel pits? Apparently the regulations vary.

Our experience with Quality Asphalt & Paving in 2020 is an example of what can go wrong. Since 2020 we have tried to get the Borough and the City of Kenai to fix QAP's violation of the Anadromous Stream Ordinance in a stream that originates on our property and then runs through their gravel pit and into the Kenai River.

Just prior to the violation, we had been working with a former Borough biologist who studied our property and made some suggestions as to how we might enhance the coho run up our stream. This was part of a project he was working on to help property owners enhance privately owned habitat.

While extracting gravel for the Spur highway project, QAP bulldozed the stream on their property, cut all trees and vegetation along the bank, built two roads over the stream, and installed two culverts. I found out later that the City of Kenai knew of this plan and approved it. This was apparently due to a difference between City and Borough regulations.

I objected- after the fact- but the repercussions were slight. QAP denied knowing it was an anadromous stream despite having installed an expensive fish culvert on that very stream a couple of hundred yards downstream, under Beaver Loop road.

The biologist who had been helping us negotiated two ways that QAP could begin to make up for damaging the stream: planting trees (which they did- maybe 20 alders, which in our lifetimes will not shade the stream), and removing an old culvert further upstream on their property. Too little, too late. Photo of clear cut stream:



There's more. QAP dumped broken-up used approach asphalt in their pit, near the stream- I believe it is still there. They installed a batch plant in the gravel pit (gone now). There was no permitting or public hearing for that plant. On the other side of our property, Great Northern pushed dirt into the pond (right at our property line) that is the origin of the anadromous stream I refer to. Photo of asphalt dumped in the QAP pit:





Rules and regulations are good, but please consider if and how they will be enforced.

No one is watching these pits. We got the Kenai City planner out a couple of times, first on Day One, when QAP clear-cut the 200 foot buffer zones around the pit, a violation of their conditional use permit. No repercussions- the trees are gone, nothing to be done.

I could go on. I can send more photos. How will you make sure pit operators follow the rules? How do they make amends when they violate the rules? Perhaps by posting large bonds? No one can stand out there and monitor them, and the damage can happen really fast. The cutting of the buffer took a few hours. And money doesn't bring back our streams, salmon or buffer zones.

Thanks for your work on this. We need gravel, but I hope you can balance that need with a consideration for the long term health of our water, people, land and wildlife.

Laura Sievert  
3329 Beaver Loop, Kenai

**From:** Blankenship, Johni  
**Sent:** Thursday, October 6, 2022 8:47 AM  
**To:** Warner, Avery  
**Subject:** FW: <EXTERNAL-SENDER>gravel pit

Public comment on O2022-36

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

From: Supercub Inalaska <sw69313@yahoo.com>  
Sent: Wednesday, October 5, 2022 4:56 PM  
To: G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
Subject: <EXTERNAL-SENDER>gravel pit

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

Hello,  
I just spoke with Ryan Raidmae on the phone.  
This email is how i am showing support  
FOR  
the proposed code rewrite of the conditional land use dewatered bar material site permits.

I live within 1/2 mile of several pits in seldovia alaska

i may be reached

loren rhyeer  
2837 glacier street  
anc ak 99508 in the winter.

907-227-8480  
for comment or confirmation.

thank you

loren

**From:** Blankenship, Johni  
**Sent:** Monday, October 10, 2022 2:06 PM  
**To:** Warner, Avery  
**Subject:** FW: <EXTERNAL-SENDER>Public Comment - Conditional Land Use Permits, Material Site Permits and Fees regarding applications, conditions, and Procedures

Ordinance 2022-36 public comment

**From:** Greg Barclay <gbearclaw52@gmail.com>  
**Sent:** Sunday, October 9, 2022 6:21 PM  
**To:** G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Public Comment - Conditional Land Use Permits, Material Site Permits and Fees regarding applications, conditions, and Procedures

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

Dear Madam Clerk,

We are not opposed to gravel pits as we realize they are part of building construction and keeping roads safe. We live in Lakewood Subdivision, at Mile 86 of the Sterling Hwy, across the road from an active gravel pit and do notice a lot more noise from the equipment and material being moved in the summer season. Would more pavement close to intersections help or some type of dust treatment applied on the access road?

There is quite an increase in dust in the area, our yards and houses during the construction season from the gravel pit. Is it possible for some type of dust prevention such as water application in certain gravel pit activities?

We like to see our community to be safe and also grow.

Thank you,

Greg and Linda Barclay  
38403 Breezewood Dr.  
Sterling, AK 99672  
907-262-1400

**From:** [Blankenship, Johni](#)  
**To:** [Warner, Avery](#)  
**Subject:** FW: <EXTERNAL-SENDER>material assembly site meeting, to be held October 25th, 2022  
**Date:** Tuesday, October 11, 2022 12:19:47 PM

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**From:** patricia gross <plgross293@gmail.com>  
**Sent:** Tuesday, October 11, 2022 12:14 PM  
**To:** G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
**Subject:** <EXTERNAL-SENDER>material assembly site meeting, to be held October 25th, 2022

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

To whom this concerns;

I am a resident close to a conditional land use area. I am against you renewing their permit, because they have to drive thru a residential area. The roads are maintained by the subdivision residents, in order to get to the main road, or go partway down the subdivision road onto a state road which the heavy trucks tear up too, then to the main road. There are several small children that play in or close to the road in the neighborhood. Thank You .

Pat Gross

**From:** Blankenship, Johni  
**Sent:** Tuesday, October 11, 2022 12:24 PM  
**To:** Warner, Avery  
**Subject:** FW: <EXTERNAL-SENDER>Public Hearing 10/25/22

**From:** D Garske <ddgarske@gmail.com>  
**Sent:** Tuesday, October 11, 2022 12:24 PM  
**To:** G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Public Hearing 10/25/22

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

Hi Johnny!

My husband and I can't make the scheduled KPB Material Site Assembly Meeting, so please consider this our written statement in regards to the gravel pits near our house:

We don't have any issues with gravel pits in general, however, when people think they can trespass and use them to sight in or practice shooting their pistols and/or rifles, especially late at night, we tend to bristle. Perhaps a security provision could be added to future permits. Must have locking gates, or something similar.

Thank you for your time,  
Diane & Hugh Garske



**From:** [Blankenship, Johni](#)  
**To:** [Warner, Avery](#)  
**Subject:** FW: <EXTERNAL-SENDER>Kenai Peninsula Borough Material Site Assembly Conditional Land Use  
**Date:** Friday, October 14, 2022 10:43:16 AM

---

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

From: [toni.swearingen@gmail.com](mailto:toni.swearingen@gmail.com) <[toni.swearingen@gmail.com](mailto:toni.swearingen@gmail.com)>  
Sent: Friday, October 14, 2022 10:40 AM  
To: G\_Notify\_AssemblyClerk <[G\\_Notify\\_AssemblyClerk@kpb.us](mailto:G_Notify_AssemblyClerk@kpb.us)>  
Subject: <EXTERNAL-SENDER>Kenai Peninsula Borough Material Site Assembly Conditional Land Use

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

To Assembly Clerk:

I would like to make a comment concerning the Conditional Land Permits, regarding Conditions and Procedures. We own a house in Soldotna, 45037 Big Eddy Rd on the corner of Kobuk and Big Eddy roads. A huge gravel pit is on two sides of our property. We would like to be assured that they will not be able to disturb our well water level or the quality of our water. Currently we have very clear and delightful water. We want to make sure they can not disturb our well. Please include protection of Quality and Quantity to the land use permits.

Thank you for your attention to this matter.  
Sincerely,  
Toni Swearingen

Toni Swearingen  
3201 Rosalind Loop  
Anchorage, AK 99607  
907-242-3367

**From:** [Blankenship, Johni](#)  
**To:** [Warner, Avery](#)  
**Subject:** FW: <EXTERNAL-SENDER>2022-36 changes for material sites  
**Date:** Monday, October 17, 2022 9:06:05 AM

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## Public comment

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**From:** mamabear Roderick <ak\_mamabear@yahoo.com>  
**Sent:** Monday, October 17, 2022 7:37 AM  
**To:** G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
**Subject:** <EXTERNAL-SENDER>2022-36 changes for material sites

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

I am a small business owner in Anchor Point, Alaska. I have owned R/C Land Improvement since 1993. Three years ago, my husband Marc Roderick was killed in a trucking accident, and I was forced to down-size the business in order to keep my business running and for me to support my family.

I went from personal loss, to COVID, to the current struggling economy and now you want to force changes in a short time frame.

I have many concerns and questions regarding the proposed changes, here are a few:

Why are you not allowing the PEU status to transfer from landowner to landowner? This devalues my assets and hurts my small businesses value. Do I get compensation?

It is not economically feasible for small business to be forced to work PEU pits every year. Could there is a better solution? Why not 3 or 5 years?

Are you going to pay for fixing my buffer zones? They were made according to the rules at the time.

Digging in water tables, now I would have to put in monitoring wells and pay surveyors and others for services. The expense would put me out of business or make my prices so high customers will buy from someone else. I feel like you're trying to kill the small business operators and reduce the number of active gravel pits. What percentage is KPB going to be paying for the monitoring wells?

Wording is vague and confusing, "to minimize", "in the vicinity"...who then makes the call on what that means? MSHA is already vague, and every inspector has their own opinion on what the regulations mean. Please don't make it worse. Clarify your statement in exact terms so there will be no disputes later. This shouldn't be left up for interpretation.

If I understand correctly, the new changes will go into effect in a few years, for me that is not enough time, I am in the middle of contracts with set prices. I don't have the budget to switch to the new changes in just a few years. Can we work on the timeline in which this will take effect?

Why would I need to pay for fixing public roads? Truckers are already taxed high, registration fees by the state, 2290 taxes by the feds, isn't that supposed to be for road repairs? Small business can't be expected to take on all the burden for public roads.

I do not support the changes. I do not support you changing my PEU status to a permit.

Thank you for your time,  
Shanna Roderick



owner of R/C Land Improvement

**From:** Blankenship, Johni  
**Sent:** Monday, October 24, 2022 10:38 AM  
**To:** Warner, Avery  
**Subject:** Fwd: <EXTERNAL-SENDER>Gravel pit Ordinance

Sent from my iPhone

Begin forwarded message:

**From:** Janet Simons <ibjanetsimons@gmail.com>  
**Date:** October 24, 2022 at 3:29:34 AM AKDT  
**To:** G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Gravel pit Ordinance

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

Good morning!

I strongly recommend that ALL gravel pit permits be reviewed every 5 years and the owner be required to justify it's renewal and that the site location is suitable for a commercial business and compatible with the surrounding neighborhood. It must be in full compliance with all applicable state and borough ordinance's concerning public safety, noise, operating hours, dust control and road maintenance on roads used to access the sight. They should also be in full compliance with OSHA and the EPA and ensure they do not effect ground water levels to adjacent properties.

Thank you,  
Janet Simons

Sent from my iPhone

**From:** Blankenship, Johni  
**Sent:** Monday, October 24, 2022 10:38 AM  
**To:** Warner, Avery  
**Subject:** Fwd: <EXTERNAL-SENDER>Gravel Pit Ordnance Update

Sent from my iPhone

Begin forwarded message:

**From:** David Weber <weber@xyz.net>  
**Date:** October 24, 2022 at 5:55:57 AM AKDT  
**To:** G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Gravel Pit Ordnance Update

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

Having lived in Upper Deitz Estates for 20 + years and having endured a active sand pit in our subdivision in past years I highly recommend that the borough adopt a plan that reviews all permits every 5 years and revokes permits that are not actively used and not in full compliance with all State,Borough, E P A and OSHA regulations.

David Weber  
58875 Deitz Ln  
Homer Ak 99603  
907 299 2204  
Sent from my iPhone

Deborah Anderson  
41140 China Poot St  
Homer, AK 99603  
(414)335-9396  
paragondeb@gmail.com

October 21, 2022

Kenai Peninsula Borough

**Re: Conditional Land Use Permits, Material Site Permits & Fees regarding Applications, Conditions, and Procedures**

The gravel pit at the top of our road is inactive and has been for at least 10 years well past the 365-day requirement. When the gravel pit was last active, we did not have as many houses in our subdivision as we do now (28 out of 40 lots); or as many children and grandchildren in the neighborhood either. We do not have a Borough maintained roads through our subdivision, they are owner maintained from road dues collected with matched grants from the Borough. If the gravel pit at the top of the road would start operating again like it did back at the beginning stages of our subdivision, our road as we know it now would not survive the brutal abuse of the constant traffic of trucks all day, every day. Your notice of decision seems to be for property owners within 100 ft of pit operation, however, trucks impact every property owner in our subdivision (there is only one way in and out on our roads not maintained by the Borough - China Poot St & Deitz Lane). I want to see clear and concise rules for how road groups on roads not maintained by the Borough would be able recover costs incurred from the Gravel Pit, or would the Gravel Pit be responsible for the maintenance directly? If this gravel pit would reopen, is the current owner responsible for reclamation of past problems whether they were responsible at the time of damage?

I strongly recommend that ALL gravel pit permits be reviewed every 5 years and the owner be required to justify its renewal and that the site location is suitable for a commercial business and compatible with the surrounding neighborhood. The location should be in full compliance with all applicable state and borough ordinance's concerning public safety, noise (gravel pit & trucking/J-braking), operating hours, use of rock crusher, dust control (in the gravel pit, trucking) and road maintenance on roads used to access the site. They should also be in full compliance with OSHA and the EPA and ensure they do not affect ground water levels/tables to adjacent properties. In our case, the gravel pit sits at the top of China Poot, above all the other lots, on a downward sloping hill. If they were to disrupt the water table by their operation, that would affect everyone downhill that has water rights. Please inform me of any future meeting on this subject!

Sincerely,

Deborah Anderson  
Property Owner

## Warner, Avery

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**From:** Blankenship, Johni  
**Sent:** Monday, October 24, 2022 11:44 AM  
**To:** Warner, Avery  
**Subject:** FW: <EXTERNAL-SENDER>gravel pit rules

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**From:** Dan Anderson <paragondan58@gmail.com>  
**Sent:** Sunday, October 23, 2022 2:22 PM  
**To:** G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
**Subject:** <EXTERNAL-SENDER>gravel pit rules

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

This note comes to you about how gravel pit rules and how they affect my neighborhood. I live on China Poot Street in Homer. At the top of China Poot Street a once operated gravel pit sits. When I built on my property 15 years ago, which is situated down hill from the pit, I remember loaded trucks rumbling down the road only to return empty to repeat over again. At the time I was building there were several lot's along the uphill road that weren't improved at the time, they since have had improvements on them. Our neighborhood has a very active road group that maintains China Poot Street. This is accomplished with road dues and grant's. Several of the neighbors have equipment that jump in when a poor spot in the road appears, which isn't very often any more as the neighborhood as a whole over time made China Poot Street a very good gravel road, with care, time and money. All the meetings/conversations about China Poot Street have borne fruit, in the way of a good road. Over the years several of the neighbors down hill from the pit have installed high tunnel greenhouses. Most use some sort of ground water collection system to water their greenhouses. Personally, we have filled long ago for our water rights, along with most if not all of the others. A few like myself have dug out holding ponds to retain water to supply our greenhouses, during the dry months. I even put in a cistern tank as backup. One of the fears is that, if the pit was to reactivate, the flow of the groundwater may be disrupted. With the aforementioned snapshot of our China Poot neighborhood while considering anything with the said pit at the top of our road. Also keep in focus the impact of heavy repeated loads on our road, the noise and dust it creates, and a possible disruption of the water flow that the greenhouses desperately rely on. Our personal greenhouse produces many meals of healthy vegetables and fruits. Not only for my family but for others that are less fortunate than our family. During harvest times we encourage several other families to come and pick what they can use, some I know for sure don't have the capital to purchase these items in the store, or the time and means to grow thier own. Thank You Ahead of Time for taking time to read this and most importantly keeping the above in the discussion about any future decisions regarding the gravel pit at the top of China Poot Street.

Dan Anderson  
41140 China Poot Street  
Homer, Alaska 99603  
(414)788-5197

**From:** curt wilcox <curtwilcox@hotmail.com>

**Sent:** Saturday, October 22, 2022 11:52 AM

**To:** G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us> **Subject:** <EXTERNAL-SENDER>Gravel pit ordinance comments

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

To whom it concerns:

I'd like to title this comment "My next door neighbor, a gravel pit."

In the summer of 2019 the construction company QAP took possession of the old Cone gravel pit next door to my residence on Beaver Loop. The first activity to announce their presence was to dig up the buffer zone. The previous owner Chester Cone had left the buffer zone intact and QAP saw this as an opportunity to mine some easy gravel. I alerted the city of Kenai to no avail. I have the correspondence via email available.

Since there was no enforcement of the city code this gravel pit operator apparently thought anything goes within the city and Borough of Kenai. They cleared the anadromous stream on their property and placed culverts to construct driveways to access the asphalt batch plant they didn't have a special use permit for. They hauled old asphalt from their road project and buried it with other debris that has drainage into the Kenai River. I have photos of this all and have contacted the city and borough on several occasions asking for enforcement to no avail. I think QAP was eventually fined \$200 and had to plant some alders along the anadromous stream they cleared. I would have thought operating an asphalt batch plant without a special use permit would have had some consequences. I would like to say to those proposing new gravel pit ordinances is there has to be enforcement of those ordinances or you'll get a neighbor just like mine. Mine seems to say we'll do what we want and in our location anyway, we don't care about the Kenai River as well.

Curt Wilcox 3329 Beaver Loop Rd, Kenai, AK













October 24, 2022

Johni Blankenship  
Kenai Peninsula Borough Clerk  
144 N. Binkley Street  
Soldotna, Alaska, 99669

RE: Public Comment on Proposed Ordinance 2022-36 Amending KPB  
Chapter 21.25 and KPB Chapter 21.29 Regarding Conditional Use  
Permits and Material Site Permits

To Whom it May Concern:

Cook Inlet Region, Inc. (CIRI) is writing to provide comments regarding Proposed Ordinance 2022-36 (PO 2022-36) which repeals and rewrites Kenai Peninsula Borough Code of Ordinances chapters 21.25 and 21.29 regarding conditional land use permits and material site permits. CIRI is an Alaska Native corporation which owns over 300,000 acres of land within the Kenai Peninsula Borough (KPB), including a significant amount of sand and gravel resources. CIRI works with local sand and gravel operators to responsibly develop these resources, and currently has two active sand and gravel pits within the KPB.

Many of CIRI's sand and gravel operators are small, local businesses which often implement a flexible business model that involves rotating between multiple sand and gravel pits based on project demand. Because each gravel site contains unique grades of material, operators need to be able to cycle between sites in order meet the specific demands of each project. Given this business model and the operators' need for flexibility, CIRI is concerned that the 365-day discontinuance period for prior existing uses contained in PO 2022-36 is too short. CIRI believes that PO 2022-36 should be amended to extend the discontinuance period to five years, which would match the length of a CLUP.

CIRI understands and appreciates KPB's interest in updating its process for conditional land use and material site permits, as well as its efforts to ensure the implementation of appropriate environmental and monitoring requirements. However, to the extent that PO 2022-36 imposes additional regulatory and compliance costs on sand and gravel operations, that cost will be passed through to the end user of the resources. This will result in higher costs for construction projects within the KPB, including public projects like road construction and maintenance. In addition, an extended permitting timeline may impact the timely completion of projects that are already restricted by short construction windows.

Addressee  
Date  
Page 2 of 2

Thank you for your consideration and the opportunity to provide comments on  
PO 2022-36.

Cook Inlet Region, Inc.

A handwritten signature in dark ink, appearing to read "S. Settle", written in a cursive style.

Suzanne Settle  
Vice President, Energy, Land and Resources

October 23, 2022

Upper Dietz Road Group

41140 China Poot St., Homer AK 99603

Kenai Peninsula Borough

[assemblyclerk@kpb.us](mailto:assemblyclerk@kpb.us)

RE: 21.29.120 Proposed changes

KPB Council & Staff,

Thank you Kenai Peninsula Borough professionals, who are updating standards and practices across the Borough on many issues. This letter is addressing gravel pit permitting, monitoring, reclamation and all phases of Conditional Land Use Permits -CLUPs or over the counter permitting for gravel pits.

Upper Dietz Road Group was formed by private land owners for the purpose of maintaining the roads in our neighborhood which are not Borough-maintained directly, but rather by using matching road grants to road groups funneled through, and administered by Kachemak City. Because we directly pay for our road maintenance and coordinate as neighbors to contract services, we see the impact that commercial use had on our roads.

The history of our steep street includes a gravel pit operation at the top of China Poot Street that has not been operating for many years. When this gravel pit was in use, it created considerable disruption to the neighborhood which included, but was not limited to Jake Braking noise, operation noise, dust issues, child safety concerns and damage to our roads due to weight of the trucks up and down the road. We are also concerned about our water table and surface water issues that a gravel pit operation is in danger of creating.

It seems that these are some of the issues being addressed by the current process to update KPB ordinances and rules. Please be sure to include concise language that requires all projects are in compliance with OSHA and EPA standards relating to protection of all water. Also protect all adjacent property individual landowner rights including noise and road damage concerns. CLUP's need to be re-evaluated every five years to be sure they are operating within standards and subject to new standards when appropriate. Reclamation is an important issue for thorough rules and oversight.

Sincerely submitted by Upper Dietz Road Group,

Kary Adkins      58835 Buds Ct

Dan & Deborah Anderson      41140 China Poot St

Eric & Tracie Brown      41145 China Poot St

Thomas Brown Home & Lot  
Jay & Amanda Cherok 58865 Deitz Ln  
Matt Dickerson 40852 China Poot St  
Mark Dickson & Ann Oberlitner 58987 Deitz Ln  
Mannfried Funk & Marcia Kuszmaul 40963 China Poot St  
Ty & Christie Gates 41102 China Poot St  
Jaime A. Hernandez & Rhema Smith 40656 China Poot St  
Judith James 40951 China Poot St.  
Ron & Sherry Johnson 40667 China Poot St  
Daniel & Susan LaPlant 40941 China Poot St  
Anthony Maurer 40921 China Poot St  
Neil McArthur 58953 Deitz Ln  
Rodney & Sandee McLay 40872 China Poot St  
Ka Mulky 40657 China Poot St  
Jackie Norvell 40989 China Poot St  
Ben Park & Mary Tricamo-Park 40944 China Poot St  
Sherman Peterson 40871 China Poot St  
Larry & Kathi Rappuhn 58850 Deitz Ln  
Dennis & Sandy Rollins 40670 China Poot St  
John & Cynthia Shankel Lot Owner  
Janet & Les Simons 41272 China Poot St  
Craig Sutphin 41089 China Poot St  
Burl & Kristen Tonga 58825 Deitz Ln  
Charlie & Beth Trowbridge 40710 China Poot St  
Dave & Melanie Webb 40762 China Poot St  
Dave & Maxine Weber 58875 Dietz Ln



## Warner, Avery

---

**From:** Blankenship, Johni  
**Sent:** Monday, October 24, 2022 1:20 PM  
**To:** Warner, Avery  
**Subject:** FW: <EXTERNAL-SENDER>Re: proposed gravel pit ordnance changes

---

**From:** Deborah Anderson <paragondeb@gmail.com>  
**Sent:** Monday, October 24, 2022 1:14 PM  
**To:** G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Re: proposed gravel pit ordnance changes

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.

Deborah Anderson  
41140 China Poot St  
Homer, AK 99603  
(414)335-9396

[paragondeb@gmail.com](mailto:paragondeb@gmail.com)

October 21, 2022

Kenai Peninsula Borough

**Re: Conditional Land Use Permits, Material Site Permits & Fees regarding Applications, Conditions, and Procedures**

The gravel pit at the top of our road is inactive and has been for at least 10 years well past the 365-day requirement. When the gravel pit was last active, we did not have as many houses in our subdivision as we do now (28 out of 40 lots); or as many children and grandchildren in the neighborhood either. We do not have a Borough maintained roads through our subdivision, they are owner maintained from road dues collected with matched grants from the Borough. If the gravel pit at the top of the road would start operating again like it did back at the beginning stages of our subdivision, our road as we know it now would not survive the brutal abuse of the constant traffic of trucks all day, every day. Your notice of decision seems to be for property owners within 100 ft of pit operation, however, trucks impact every property owner in our subdivision (there is only one way in and out on our roads not maintained by the Borough - China Poot St & Deitz Lane). I want to see clear and concise rules for how road

groups on roads not maintained by the Borough would be able recover costs incurred from the Gravel Pit, or would the Gravel Pit be responsible for the maintenance directly? If this gravel pit would reopen, is the current owner responsible for reclamation of past problems whether they were responsible at the time of damage?

I strongly recommend that ALL gravel pit permits be reviewed every 5 years and the owner be required to justify its renewal and that the site location is suitable for a commercial business and compatible with the surrounding neighborhood. The location should be in full compliance with all applicable state and borough ordinance's concerning public safety, noise (gravel pit & trucking/J-braking), operating hours, use of rock crusher, dust control (in the gravel pit, trucking) and road maintenance on roads used to access the site. They should also be in full compliance with OSHA and the EPA and ensure they do not affect ground water levels/tables to adjacent properties. In our case, the gravel pit sits at the top of China Poot, above all the other lots, on a downward sloping hill. If they were to disrupt the water table by their operation, that would affect everyone downhill that has water rights. Please inform me of any future meeting on this subject!

Sincerely,

Deborah Anderson  
Property Owner

|  
--

Sent from Gmail Mobile



## Warner, Avery

---

**From:** Blankenship, Johni  
**Sent:** Monday, October 24, 2022 4:10 PM  
**To:** Warner, Avery  
**Subject:** FW: <EXTERNAL-SENDER>Comment on gravel pit ordinance

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

**From:** laura sievert <laurasievert@hotmail.com>  
**Sent:** Monday, October 24, 2022 3:11 PM  
**To:** G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Comment on gravel pit ordinance

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

To the Assembly:

Over the last year or so I have commented on and sent photo evidence of violations of existing gravel pit regulations in the Cone pit and Glen Martin's pit that abut my property on Beaver Loop.

Before finalizing the ordinance currently being considered, I would urge you to go out and walk around those pits in order to see the need not only for regulations, but also for enforcement of those regulations. As I've stated before, the violations are both long term- dumped asphalt, kiddie pool oil catchers under leaking vehicles, junked equipment, etc, and also short term- such as removal of required buffer zones. That violation was done in a couple of hours and the city of Kenai could do nothing.

I hope that you can craft an ordinance that prevents such activity. I would also propose that very large monetary bonds be posted before mining commences, and that the pits undergo periodic inspection by the Borough.

Thank you.

Laura Sievert     3329 Beaver Loop, Kenai

## Warner, Avery

---

**From:** Blankenship, Johni  
**Sent:** Monday, October 24, 2022 5:01 PM  
**To:** Warner, Avery  
**Subject:** FW: <EXTERNAL-SENDER>Public Comment on KPB Ordinance 2022-36

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

**From:** Kaitlin Vadla <kaitlinvadla@gmail.com>  
**Sent:** Monday, October 24, 2022 4:55 PM  
**To:** G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Public Comment on KPB Ordinance 2022-36

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

I support the introduction and further discussion of KENAI PENINSULA BOROUGH ORDINANCE 2022-36: AN ORDINANCE AMENDING KPB CHAPTER 21.25 AND KPB CHAPTER 21.29 REGARDING CONDITIONAL LAND USE PERMITS AND MATERIAL SITE PERMITS, UPDATING NOTICE, APPLICABILITY, PERMIT TYPES, APPLICATION REQUIREMENTS, STANDARDS AND PERMITS CONDITIONS.

As chair of Soldotna's Planning and Zoning Commission, I have seen multiple conflicting land-use and property value issues over the years. The city's geographic purview is quite small compared to the borough's and we look to the assembly's discussion and passage of this ordinance as we seek to incorporate best practices when updating our municipal code regarding material site permits in the near future.

I hope the borough retains measures in this ordinance that help level the playing field for all current and future entrepreneurs who wish to provide KPB residents with much needed materials like gravel. Currently, pits that have been allowed to operate under outdated rules have an unfair advantage. My hope is that this ordinance will retain these grandfathered pits ability to operate, while bringing them gradually into compliance with at least the bare minimum safety and environmental standards.

Kaitlin Vadla  
Clam Gulch

# Kenai Peninsula Borough

## Material Site Subcommittee

Public Comment Submitted 2022-10-24 22:34:55

<b>Name</b>
Joshua Ross
<b>Email Address</b>
rocky@legacyak.net
<b>Subject</b>
O2022-36
<b>Message</b>
<p>Based on a quick review of who is in favor of and who is opposed to this ordinance, I will be sending in a letter in opposition of proposed changes.</p> <p>I believe these changes are unnecessary, don't solve any issues (if there are any) and will dramatically increase aggregate costs on the southern peninsula. Rarely is more government involvement the best answer to any issue. Should issues with the current ordinance/permitting process exist, at a minimum, the assembly must seek professional input from local aggregate handling businesses.</p> <p>Increasing costs associated with handling aggregates WILL eliminate many smaller businesses, make land development more difficult and expensive, and further increase building expenses for homeowners and builders alike. The trickle down impacts of increasing cost of litteral foundations are impossible to estimate.</p>

Good evening.

My name is Dan DeRaeve. I am the owner and President of Peninsula Sand & Gravel. We have a PEU gravel pit a couple miles east of Sterling.

First of all I'd like to say that I feel for the people in Anchor Point that have the problem with their home sites. I think they may have a legitimate complaint and if so, I hope they get their issues resolved.

On the other hand I don't understand why the assembly is considering lumping all gravel pits together and taking away our PEU status. It seems that because of a few isolated incidents and bad actors a great many will suffer. It makes more sense to me to deal with the individual problems and leave the pit owners that are not involved out of it.

I am also concerned about the water table restrictions. This greatly reduces the gravel resources for pit owners and in some cases will put some smaller pit owners out of business. For the others it will drive the cost of operations up substantially and ultimately drive the cost of gravel up. As gravel pit owners, we cannot shoulder the burden of the cost of the added restrictions. All we can do is raise the cost of our products which will affect everyone. Everyone uses the material that comes out of these gravel pits in one form or another. Whether it be gravel, sand, concrete, brick, and block for our homes or pavement, concrete and many forms of gravel products for our roads, bridges, buildings and airports.

So I am asking the KPB assembly members to carefully consider these things before you make your decisions. I thank you for your time and considerations.

Sincerely,

Dan DeRaeve

## Warner, Avery

---

**From:** Blankenship, Johni  
**Sent:** Tuesday, October 25, 2022 8:49 AM  
**To:** Warner, Avery  
**Subject:** FW: <EXTERNAL-SENDER>public hearing Oct 25,2022 for Conditional Land Permits

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**From:** Steve Ruther <Steve.Ruther@outlook.com>  
**Sent:** Monday, October 24, 2022 5:51 PM  
**To:** G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
**Subject:** <EXTERNAL-SENDER>public hearing Oct 25,2022 for Conditional Land Permits

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

We have received notice that we may comment on proposed amendments to Conditional Land Use Permits as we are a land owner within 2,640 feet of an existing material site. It is most disruptive to our business when trucks hauling gravel or other such material drive by our location and use their gears to slow down for the stop light at East Poppy Lane and Kalifornsky Beach Road. By downshifting in this manner their trucks emit a loud rumbling engine noise that can actually interrupt normal personal and phone conversations in our office. We would appreciate an advisory that all trucks within business or residential area be forbidden to create this noise pollution.

Thank you,

Steve & Karen Rutherford

FLOOR-EVER, INC.  
47201 EAST POPPY LANE  
SOLDOTNA, AK 99669  
907-260-9270 office  
907-953-9270 cell



# Kenai Peninsula Borough

## Material Site Subcommittee

Public Comment Submitted 2022-10-24 17:31:32

<b>Name</b>
Mark Tornai
<b>Email Address</b>
mdtornai@gmail.com
<b>Subject</b>
Amendments to material site ordinance
<b>Message</b>
<p>The Counter Permit should remain no more than 2.5 acre size and retain a new language concerning a 2 year time with one 12 month extension.</p> <p>Justification: To allow a material site greater than 2.5 acres would have multiple negative impacts to the properties in the vicinity. Without any prior public input, this change is irresponsible and will be a great disservice to the residents of the borough. Also, it would not be in accordance with the Comprehensive Plan.</p>

## Warner, Avery

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**From:** Blankenship, Johni  
**Sent:** Tuesday, October 25, 2022 9:50 AM  
**To:** Warner, Avery  
**Subject:** FW: <EXTERNAL-SENDER>02022-36 Material site Permitting

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**From:** Douglas B Schade <dougschade50@gmail.com>  
**Sent:** Tuesday, October 25, 2022 9:10 AM  
**To:** G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
**Subject:** <EXTERNAL-SENDER>02022-36 Material site Permitting

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

To the Mayor, President and Members of the Kenai Peninsula Borough Assembly

RE: Opposition to Proposed Ordinance 2022-36

In regard to the upcoming ordinance 02022-36, I believe this ordinance if in acted is going to cause the general public undo (significant) harm. As Stated in the Memorandum from the Planning Director Robert Ruffner: (especially dimensional or durational descriptions like the 365-day period for the prior-existing use abandonment are intended to act as "springboards" for the Assembly) In effects this gives the KPB the right to cancel the PEU permits.

By doing so the cost for new homes, upgrading roads and current roads are going to skyrocket. When you take the little "guy" out of the system and only allow the big producers with the capital to conform with the new requirements, you are limiting competing, and the remaining operator will need to pass the cost on to the customer. For an example: In 2011 the cost for gravel delivered in the Homer area was around \$105.00 for 10 yards. This summer (2022) the same load, from the same pit, was around \$225.00, an increase way above the standard cost of living increases. On average, the current cost of a new home start is going to run around \$30,000 to \$50,000 for the driveway, sewer and foundation. The new ordinance can be expected to increase a new home start by at least 30%. That is a increase of \$9,000.00 to \$15,000.00 per home start. It also stands to reason that this ordinance will increase the cost to build and maintain our current and new road system, but by how much is really undetermined at this time.

I understand the assembly is responding to complaints from the general public about the noise and dust of the pits, many of which have been in use for years. However, it should be noted that due to the increased need of housing, many of these people bought in subdivisions which had been built around the gravel source; largely in order to keep the cost down. The new homeowners are now complaining that the gravel pit is disturbing them, but they were able to afford the new home because of the gravel pit. There are better ways for the KPB and its citizens to work on being better neighbors, without the significant economic costs.

Please remember these operators have been keeping the PEU pits in operation, which gives a constant supply of affordable gravel to the general public. In these difficult economic times, where people are struggling to make ends meet, this is not a prudent measure.

Thank you for your time and consideration.

Douglas B Schade



34705 Lusky Rd

Homer Ak 99603

907-235-8939

907-399-8734

Sent from [Mail](#) for Windows

## Warner, Avery

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**From:** Blankenship, Johni  
**Sent:** Tuesday, October 25, 2022 10:14 AM  
**To:** Warner, Avery  
**Subject:** FW: <EXTERNAL-SENDER>Proposed Ordinance 2022-36

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**From:** Natasha Schade <schade@horizonsatellite.com>  
**Sent:** Tuesday, October 25, 2022 10:12 AM  
**To:** G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Proposed Ordinance 2022-36

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

To the Mayor, President and Members of the Kenai Peninsula Borough Assembly

RE: Opposition to Proposed Ordinance 2022-36

In regard to the upcoming ordinance 02022-36, this ordinance if enacted will cause the general public substantial undo economic harm. As Stated in the Memorandum from the Planning Director Robert Ruffner: (especially dimensional or durational descriptions like the 365-day period for the prior-existing use abandonment are intended to act as "springboards" for the Assembly) In effects this gives the KPB the right to cancel the PEU permits.

By doing so the cost for new homes, upgrading current roads and development of new roads will skyrocket, thus effecting small business and consumer alike. Even to the point of forcing smaller businesses out of the market. When you take the little "guy" out of the system and only allow the big producers with the capital to conform with the new requirements, you are limiting competition, and the remaining operator will need to pass the cost on to the customer. For an example: In 2011 the cost for gravel delivered in the Homer area was around \$105.00 for 10 yards. This summer (2022) the same load, from the same pit, was around \$225.00, an increase way above the standard cost of living increases. On average, the current cost of a new driveway, sewer, and foundation will run approximately \$30,000 to \$50,000. The new ordinance can be expected to increase a that same work by at least 30%. That is an increase of \$9,000.00 to \$15,000.00 per home start, just for the groundwork. It also stands to reason that this ordinance will increase the cost to build and maintain our current and road system, but by how much is really undetermined at this time.

From my understanding, the assembly is responding to complaints from the general public about the noise and dust of the pits, many of which have been in use for years and even decades prior to the public encroachment. It should be noted that due to the increased demand and cost of housing, many people purchased in subdivisions and built around these gravel sources in order to keep their own purchase and build costs down. The new homeowners are now complaining that the gravel pit is disturbing them. However, it is because of that gravel pit, they were able to afford the land and new home. There are better ways for the KPB and its citizens to work on being better neighbors without the significant economic costs that will result from this proposed ordinance.

Please remember these operators have been keeping the PEU pits in operation, which gives a constant supply of affordable gravel to the general public. In these difficult economic times, when people are struggling to make ends meet, this is not a prudent measure.

Thank you for your time and consideration.

Natasha Schade  
34705 Lusky Rd.  
Homer, AK 99603  
(907)235-2695  
(907)399-1065

## Warner, Avery

---

**From:** Blankenship, Johni  
**Sent:** Tuesday, October 25, 2022 11:11 AM  
**To:** Warner, Avery  
**Subject:** FW: <EXTERNAL-SENDER>Materials Site Assembly Public Comment for 10/25/22 Meeting: Please forward for reading at tonight's meeting

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**From:** ullr 907 <ullr907@yahoo.com>  
**Sent:** Tuesday, October 25, 2022 10:53 AM  
**To:** G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Materials Site Assembly Public Comment for 10/25/22 Meeting: Please forward for reading at tonight's meeting

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

To the Kenai Borough Materials Site Subcommittee:

My name is Daniel Hawksworth. I am a permanent resident of Hope, Alaska and have resided near the KPB Materials Site adjacent to the Hope Airstrip for over 20 years.

For the entire duration of my residency here, the KPB has allowed flagrant and continuous violations of it's permitted use agreement with one particular contractor, AG & Building Supply, Owned by Robert Davidson of Hope, Alaska.

I have submitted volumes of documentation over the years to Julie Dennison at the Land Management division of the KPB. Julie has been a champion of perpetually attempting to bring this contractor into compliance, but unfortunately, a lack of funding and resources means there are no "teeth" so to speak, to enforce permit agreements and violations of the terms of use agreements made with the KPB to operate at this site.

A great example of this would be the numerous pieces of dilapidated heavy equipment like bulldozers that have been allowed to occupy this Materials Site as a personal equipment storage space for AG & Building Supply. Despite not being used or relating to any permitted work, these relics have and continue to leak copious amounts of oils directly onto the ground without any attempt to contain them at whatever location within the Materials Site the contractor chooses to park them.

Another example would be the same contractor, AG & Building Supply, routinely operating in violation of the permit agreement, the posted regulations and standards the KPB requires to operate on the site as well as Alaska OSHA and M-SHAW regulations regarding slope angle and benching of excavation work. Vertical excavation is not allowed, yet the contractor repeatedly engages in such unsafe practices without penalty. It is only after repeated requests are made to the KPB, and even then, very infrequently, is the contractor required to restore the excavated slope into compliance with regulations. A 30 foot vertical fall hazard without any attempt to delineate the area is simply gross negligence and carelessness by the part of the contractor.

The Land Management division clearly lacks the resources needed to oversee the proper operating procedures of its permitted users. So similarly, we see a lack of resources to correct other site related issues. And I am only speaking to one site, so I imagine this to be quite a common and widespread issue on the Kenai Peninsula.

No enforcement of site hours of operation. No enforcement of improper activities on the site such as camping or target shooting. No attempts to maintain or replace signage around the site. No gates or securing of access of the site. No enforcement of dumping of prohibited materials. No method of accurately reporting the amount of materials being removed from the site. These are all issues I routinely witness at the Hope Materials Site.

To the Subcommittee, I ask you to please listen to what KPB residents that live near your Materials Sites are telling you. I ask you to please take actions that will allow for and fund the enforcement of Site Use Agreement violations. I ask you to take actions that have consequence to the violator. I ask that you take actions that show you acknowledge the concerns of neighbors of these Materials Sites, such as noise, hours of operation, dust control, unauthorized usage such as shooting, partying, and driving of off road vehicles. I ask you to limit access to all of the Materials Sites after hours by the use of locking gates, I ask you to hold contractors accountable for repeated bad behavior at these Materials Sites by terminating permits and contractual agreements (ie for road maintenance contracts) and not entering into any future agreements with repeat Site violators.

As the saying goes, KPB Materials Site Subcommittee members, it's time to grow a pair.

Sincerely,

Daniel Hawksworth  
Hope, AK

Introduced by:	Mayor
Substitute Introduced:	01/16/18
Resolution 2018-004 (Mayor)	See Original for Prior History
Action:	Adopted
Vote:	8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2018-004  
(MAYOR) SUBSTITUTE**

**A RESOLUTION ESTABLISHING A MATERIAL SITE WORK GROUP**

**WHEREAS,** KPB 21.25.040(A)(2) requires a permit for the commencement of commercial sand, gravel or material sites within the rural district of the Kenai Peninsula Borough; and

**WHEREAS,** KPB 21.29 provides for a permit process to extract material from the ground; and

**WHEREAS,** with the exception of one minor change relating to floodplain permits, the material site code was last updated in 2006; and

**WHEREAS,** the assembly, administration, planning department and the planning commission have recognized that certain provisions of the material site ordinance can be clarified for the operators, public, and staff; and;

**WHEREAS,** the public has expressed many concerns about dust, noise, water, and negative secondary impacts of material sites; and

**WHEREAS,** it is the intent of the assembly and administration to involve the public and industry in a collaborative discussion designed to incorporate possible changes to the material site code;

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

**SECTION 1.** That a work group is established for the purpose of examining the current material site permit process and potentially recommending amendments to the material site code provisions.

**SECTION 2.** That the work group shall consist of at least two assembly members; two planning commissioners; two members of the public; and, two material site industry members. The group shall elect from among its members a chair and a vice-chair who may serve in the absence of the chair. The two members of the assembly shall be appointed by the assembly. The remaining members shall be appointed by the mayor.

**SECTION 3.** That each meeting time and place shall be advertised, open to the public and subject to the Open Meetings Act.


**SECTION 4.** The material site work group shall have no authority to act on behalf of the assembly or the administration or communicate on the borough's behalf other than to make recommendations to the planning commission, administration and assembly.

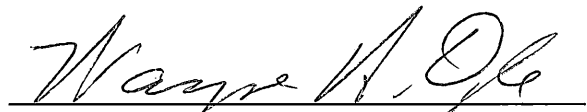
**SECTION 5.** The work group shall provide a final report to the planning commission, administration and assembly by June 5, 2018, and then discontinue unless extended by the assembly.

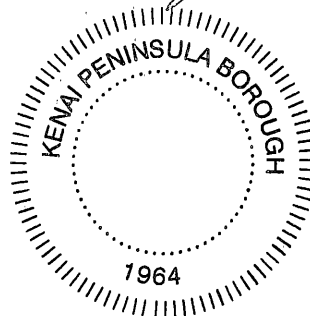
**SECTION 6.** That this resolution shall take effect immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF JANUARY, 2018.**

ATTEST:

  
John Blankenship, MMC, Borough Clerk

  
Wayne H. Ogle, Assembly President



Yes: Bagley, Blakeley, Carpenter, Dunne, Fischer, Hibbert, Smalley, Ogle  
No: None  
Absent: Cooper



Introduced by:	Mayor
Substitute Introduced:	12/03/19
Ordinance 2019-30 (Mayor):	See Original Ordinance for Prior History
Hearing:	12/03/19
Action:	Failed to Enact
Vote:	3 Yes, 6 No, 0 Absent
Action:	Reconsideration Filed by Bjorkman

**KENAI PENINSULA BOROUGH  
ORDINANCE 2019-30  
(MAYOR) SUBSTITUTE**

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

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

- WHEREAS,** Goal 1 of the Mining and Minerals Processing section of the 1990 Kenai Peninsula Borough Coastal Management Program is to provide opportunities to explore, extract and process minerals, sand and gravel resources, while protecting environmental quality and other resource users; and
- WHEREAS,** an assembly subcommittee was formed in 2005 to review the material site code; and
- WHEREAS,** Ordinance 2006-01 (Substitute) codified as KPB 21.29 was adopted in 2006 after consideration of the subcommittee's report; and
- WHEREAS,** the planning department has been administering Ordinance 2006-01 (Substitute), codified as KPB 21.29 for 13 years; and
- WHEREAS,** KPB 21.25.040 requires a permit for the commencement of certain land uses within the rural district of the Kenai Peninsula Borough; and
- WHEREAS,** the planning department has recognized that certain provisions of the material site ordinance could be better clarified for the operators, public, and staff; and
- WHEREAS,** the planning commission and planning department received comments expressing concerns about dust, noise, safety, and aesthetics; and
- WHEREAS,** approximately 253 registered prior existing use material sites and approximately 99 conditional land use permits for material sites have been granted since 1996;
- WHEREAS,** the planning department receives numerous complaints regarding unreclaimed parcels registered as nonconforming prior existing material sites which have not been regulated by KPB; and
- WHEREAS,** the assembly established a material site work group by adoption of resolution 2018-004 (Substitute) to engage in a collaborative discussion involving the public and industry to make recommendations regarding the material site code; and
- WHEREAS,** assembly resolution 2018-025 extended the deadline for the final report to be submitted to the assembly, administration and planning commission to April 30, 2019; and
- WHEREAS,** certain additional conditions placed on material site permits would facilitate a reduction in the negative secondary impacts of material sites, e.g. dust, noise, safety, and unsightliness of material sites; and
- WHEREAS,** at its regularly scheduled meeting of November 12, 2019, the Planning Commission recommended approval by unanimous consent;

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

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

**21.25.030. - Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Correctional community residential center (CCRC)* means a community residential center, other than a correctional institution, for the short-term or temporary detention of prisoners in transition from a correctional institution, performing restitution, or undergoing rehabilitation or recovery from a legal infirmity. CCRCs may not be used for detention of prisoners who pose a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision. The determination of whether a prisoner poses a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision shall be made by the commissioner of corrections for state prisoners and the United States Attorney General, or the U.S. Director of Bureau of Prisons for federal prisoners.

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

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

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

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

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

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

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

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

*Multi-purpose senior center* is a facility where persons 60 years of age or older are provided with services and activities suited to their particular needs. The

services and activities may include, but are not limited to, health examinations, legal assistance, recreation programs, general social activities, telephone reassurance programs, nutrition classes, meals at minimum cost, counseling, protective services, programs for shut-ins and education programs, and that complies with Alaska Statutes 47.60.010—47.60.090, as currently written or hereafter amended.

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

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

*Prisoner* means:

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

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

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

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

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

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

*Stable condition* means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of



renewable resources on the site within a reasonable period of time by natural processes.

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

*Topsoil* means material suitable for vegetative growth.

*Vicinity* means the same as the area of notification.

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

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

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

#### **CHAPTER 21.29. MATERIAL SITE PERMITS**

##### **21.29.010. Material extraction exempt from obtaining a permit.**

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

**21.29.020. Material extraction and activities requiring a permit.**

- A. *Counter permit.* A counter permit is required for material extraction which disturbs no more than 2.5 cumulative acres and does not enter the water table. Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension.
- B. *Conditional land use permit.* A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. A CLUP is required for materials processing. A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPS and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.

**21.29.030. Application procedure.**

- A. In order to obtain a counter permit or CLUP, an applicant shall first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application shall include the following items:
  - 1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
  - 2. Expected life span of the material site;
  - 3. A buffer plan consistent with KPB 21.29.050(A)(2);
  - 4. Reclamation plan consistent with KPB 21.29.060;
  - 5. The depth of excavation;
  - 6. Type of material to be extracted and type of equipment to be used;
  - 7. Any voluntary permit conditions the applicant proposes. Failure to include a proposed voluntary permit condition in the application does not preclude the applicant from proposing or agreeing to voluntary permit conditions at a later time;

8. Surface water protection measures, if any, for adjacent properties designed by a civil engineer, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;
9. A site plan and field verification prepared by a professional surveyor licensed and registered in the State of Alaska, including the following information:
  - a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
  - b. Proposed buffers consistent with KPB 21.29.050(A)(2), or alternate buffer plan;
  - c. Identification of all encumbrances, including, but not limited to easements;
  - d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to the issuance of the material site permit;
  - e. Anticipated haul routes;
  - f. Location and [DEPTH] elevation of test holes, and depth of groundwater, if encountered between May and December. At least one test hole per ten acres of excavated area is required to be dug. The test holes shall be at least four feet below the proposed depth of excavation;
  - g. Location of wells of adjacent property owners within 300 feet of the proposed parcel boundary;
  - h. Location of any water body on the parcel, including the location of any riparian wetland as determined by "Wetland Mapping and Classification of the Kenai Lowland, Alaska" maps created by the Kenai Watershed Forum;
  - [I. SURFACE WATER PROTECTION MEASURES FOR ADJACENT PROPERTIES, INCLUDING THE USE OF DIVERSION CHANNELS, INTERCEPTION DITCHES, ON-SITE COLLECTION DITCHES, SEDIMENT PONDS AND TRAPS, AND SILT FENCE; PROVIDE DESIGNS FOR SUBSTANTIAL STRUCTURES; INDICATE WHICH

STRUCTURES WILL REMAIN AS PERMANENT FEATURES AT THE CONCLUSION OF OPERATIONS, IF ANY;]

[J]i. Location of any processing areas on parcel, if applicable;

[K]j. North arrow;

[L]k. The scale to which the site plan is drawn;

[M]l. Preparer's name, date and seal;

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

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

#### **21.29.040. Standards for sand, gravel or material sites.**

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:

1. Protects against the lowering of water sources serving other properties;
2. Protects against physical damage to [OTHER] adjacent properties;
3. [MINIMIZES] Protects against off-site movement of dust;
4. [MINIMIZES] Protects against noise disturbance to other properties;
5. [MINIMIZES] Protects against visual impacts of the material site; [AND]
6. Provides for alternate post-mining land uses[.];
7. Protects Receiving Waters against adverse effects to fish and wildlife habitat;

8. Protects against traffic impacts; and
9. Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.

**21.29.050. Permit conditions.**

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

1. [PARCEL]Permit boundaries. [ALL BOUNDARIES OF THE SUBJECT PARCEL] The buffers and any easements or right-of-way abutting the proposed permit area shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter. Field verification and staking will require the services of a professional land surveyor. Stakes shall be in place [AT TIME OF APPLICATION] prior to issuance of the permit.

- [2. *BUFFER ZONE. A BUFFER ZONE SHALL BE MAINTAINED AROUND THE EXCAVATION PERIMETER OR PARCEL BOUNDARIES. WHERE AN EASEMENT EXISTS, A BUFFER SHALL NOT OVERLAP THE EASEMENT, UNLESS OTHERWISE CONDITIONED BY THE PLANNING DIRECTOR OR PLANNING COMMISSION.*

A. THE BUFFER ZONE SHALL PROVIDE AND RETAIN A BASIC BUFFER OF:

- I. 50 FEET OF UNDISTURBED NATURAL VEGETATION, OR
- II. A MINIMUM SIX-FOOT EARTHEN BERM WITH AT LEAST A 2:1 SLOPE, OR
- III. A MINIMUM SIX-FOOT FENCE.

B. A 2:1 SLOPE SHALL BE MAINTAINED BETWEEN THE BUFFER ZONE AND EXCAVATION FLOOR ON ALL INACTIVE SITE WALLS. MATERIAL FROM THE AREA DESIGNATED FOR THE 2:1 SLOPE MAY BE REMOVED IF SUITABLE, STABILIZING MATERIAL IS REPLACED WITHIN 30 DAYS FROM THE TIME OF REMOVAL.

C. THE PLANNING COMMISSION OR PLANNING DIRECTOR SHALL DESIGNATE ONE OR A COMBINATION OF THE ABOVE AS IT DEEMS APPROPRIATE. THE VEGETATION AND FENCE SHALL BE OF SUFFICIENT HEIGHT AND DENSITY TO PROVIDE VISUAL AND NOISE SCREENING OF THE PROPOSED USE AS DEEMED

APPROPRIATE BY THE PLANNING COMMISSION OR PLANNING DIRECTOR.

- D. BUFFERS SHALL NOT CAUSE SURFACE WATER DIVERSION WHICH NEGATIVELY IMPACTS ADJACENT PROPERTIES OR WATER BODIES. SPECIFIC FINDINGS ARE REQUIRED TO ALTER THE BUFFER REQUIREMENTS OF KPB 21.29.050(A)(2)(A) IN ORDER TO MINIMIZE NEGATIVE IMPACTS FROM SURFACE WATER DIVERSION. FOR PURPOSES OF THIS SECTION, SURFACE WATER DIVERSION IS DEFINED AS EROSION, FLOODING, DEHYDRATION OR DRAINING, OR CHANNELING. NOT ALL SURFACE WATER DIVERSION RESULTS IN A NEGATIVE IMPACT.
- E. AT ITS DISCRETION, THE PLANNING COMMISSION MAY WAIVE BUFFER REQUIREMENTS WHERE THE TOPOGRAPHY OF THE PROPERTY OR THE PLACEMENT OF NATURAL BARRIERS MAKES SCREENING NOT FEASIBLE OR NOT NECESSARY. BUFFER REQUIREMENTS SHALL BE MADE IN CONSIDERATION OF AND IN ACCORDANCE WITH EXISTING USES OF ADJACENT PROPERTY AT THE TIME OF APPROVAL OF THE PERMIT. THERE IS NO REQUIREMENT TO BUFFER THE MATERIAL SITE FROM USES WHICH COMMENCE AFTER THE APPROVAL OF THE PERMIT.]

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

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

or a minimum six-foot fence or a combination thereof; unless the permittee proposes another solution approved by the planning commission or planning director, as applicable, to meet this condition.

- e. The buffer requirements may be waived by the planning commission or planning director, as applicable, where the topography of the property or the placement of natural barriers makes screening not feasible or unnecessary.
- f. There is no requirement to buffer a material site from uses that commence after approval of the permit.
- g. When a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required.

3. *Processing.* In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of [OF ADJACENT PROPERTY AT THE TIME] the properties in the vicinity at the time of approval of the permit.

4. *Water source separation.*

- a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.
- b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation [FROM]between extraction operations and the seasonal high water table be maintained.
- c. All CLUPS shall be issued with a condition which requires that a [TWO] four-foot vertical separation [FROM]between extraction operations and the seasonal high water table be maintained.
- d. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial



civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.

5. *Excavation in the water table.* Excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission based on the following:
  - a. Certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.
  - b. The installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate, and water elevation.
  - c. Groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three-month intervals by a qualified independent civil engineer or professional hydrogeologist, for at least one year prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
  - d. Operations shall not breach an aquifer-confining layer.
6. *Waterbodies.*
  - a. An undisturbed buffer shall be left and no earth material extraction activities shall take place within [100] 200 linear feet from excavation limits and the ordinary high water level of surface water bodies such as a lake, river, stream, [OR OTHER WATER BODY, INCLUDING] riparian wetlands and mapped floodplains as defined in KPB 21.06. This regulation shall not apply to man-made waterbodies being constructed during the course of the materials extraction activities. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.
  - b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.

7. *Fuel storage.* Fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
8. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads as required by KPB 14.40.175 and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
9. *Subdivision.* Any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit. The planning director may issue a written exemption from the amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a material site and all original permit conditions can be met.
10. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
11. *Hours of operation.* [ROCK CRUSHING EQUIPMENT SHALL NOT BE OPERATED BETWEEN 10:00 P.M. AND 6:00 A.M.]
  - a. Processing equipment shall not be operated between 7:00 p.m. and 6:00 a.m.
  - b. The planning commission may grant exceptions to increase the hours of operation and processing based on surrounding land uses, topography, screening the material site from properties in the vicinity and conditions placed on the permit by the planning commission to mitigate the noise, dust and visual impacts caused by the material site.
12. *Reclamation.*
  - a. Reclamation shall be consistent with the reclamation plan approved by the planning commission or planning director as appropriate in accord with KPB 21.29.060.
  - b. [AS A CONDITION OF ISSUING THE PERMIT, THE APPLICANT SHALL SUBMIT A RECLAMATION PLAN AND POST A BOND TO COVER THE ANTICIPATED RECLAMATION COSTS IN AN AMOUNT TO BE DETERMINED BY THE PLANNING DIRECTOR. THIS BONDING REQUIREMENT SHALL NOT APPLY TO SAND, GRAVEL

OR MATERIAL SITES FOR WHICH AN EXEMPTION FROM STATE BOND REQUIREMENTS FOR SMALL OPERATIONS IS APPLICABLE PURSUANT TO AS 27.19.050.] The applicant shall operate the material site consistent with the approved reclamation plan and provide bonding pursuant to 21.29.060(B). This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.

13. *Other permits.* Permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC air and water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives. Any violation of these regulations or permits reported to or observed by borough personnel will be forwarded to the appropriate agency for enforcement.
14. [~~VOLUNTARY~~]Volunteered *permit conditions.* Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission for CLUPs or the planning director for counter permits. Such conditions must be consistent with the standards set forth in KPB 21.29.040(A). Planning commission approval of such conditions shall be contingent upon a finding that the conditions will be in the best interest of the borough and the surrounding property owners. [~~VOLUNTARY~~] Volunteered permit conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in [~~VOLUNTARY~~] volunteered permit conditions may be proposed [AT] by permit [~~RENEWAL OR AMENDMENT~~] modification.
15. *Signage.* For permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access, whichever is more visible. Sign dimensions shall be no more than 15" by 15" and must contain the following information: the phrase "Permitted Material Site" along with the permittee's business name and a contact phone number.

16. Appeal. No clearing of vegetation shall occur within the 100-foot maximum buffer area from the permit boundary nor shall the permit be issued or operable until the deadline for the appeal, pursuant to KPB 21.20, has expired.
17. Sound level.
- a. No sound resulting from the materials extraction activities shall create a sound level, when measured at or within the property boundary of the adjacent land, that exceeds 75 dB(A).
  - b. For any sound that is of short duration between the hours of 7 a.m. and 7 p.m. the levels may be increased by:
    - i. Five dB(A) for a total of 15 minutes in any one hour; or
    - ii. Ten dB(A) for a total of five minutes in any hour; or
    - iii. Fifteen db(A) for a total of one and one-half minutes in any one-hour period.
  - c. At its discretion, the planning commission or planning director, as applicable, may reduce or waive the sound level requirements on any or all property boundaries. Sound level requirements shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
  - d. Mandatory condition KPB 21.29.050(A)(17) shall expire 365 days from adoption of KPB 21.29.050(A)(17) unless extended or modified by the assembly.
18. Reverse signal alarms. Reverse signal alarms, used at the material site on loaders, excavators, and other earthmoving equipment shall be more technically advanced devices; such as, a multi-frequency “white noise” alarms rather than the common, single (high-pitch) tone alarms. At its discretion, the planning commission or planning director, as applicable, may waive this requirement or a portion of this requirement. The waiver of this requirement shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
19. Ingress and egress. The planning commission or planning director may determine the points of ingress and egress for the material site. The permittee is not required to construct haul routes outside the

parcel boundaries of the material site. Driveway authorization must be acquired, from either the state through an “Approval to Construct” or a borough road service area as appropriate, prior to issuance of a material site permit when accessing a public right-of-way.

20. *Dust suppression.* Dust suppression shall be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on haul routes. Based on surrounding land uses the planning commission or planning director, as applicable, may waive or reduce the requirement for dust suppression on haul routes.
21. *Surface water protection.* Use of surface water protection measures as specified in KPB 21.29.030(A)(8) must be approved by a licensed civil engineer.
22. *Groundwater elevation.* All material sites must maintain one monitoring tube per ten acres of excavated area four feet below the proposed excavation.
23. *Setback.* Material site excavation areas shall be 250-feet from the property boundaries of any local option zoning district, existing public school ground, private school ground, college campus, child care facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation shall be included in the 250-foot setback.

#### **21.29.055. Decision.**

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

#### **21.29.060. Reclamation plan.**

- A. All material site permit applications require an overall reclamation plan along with a five-year reclamation plan. A site plan for reclamation shall be required including a scaled drawing with finished contours. A five-year reclamation plan must be submitted with a permit extension request.
- B. The applicant shall revegetate with a non-invasive plant species and reclaim all disturbed land [UPON EXHAUSTING THE MATERIAL ON-SITE, OR WITHIN A

PRE-DETERMINED TIME PERIOD FOR LONG-TERM ACTIVITIES, SO AS TO LEAVE THE LAND IN A STABLE CONDITION. RECLAMATION MUST OCCUR FOR ALL EXHAUSTED AREAS OF THE SITE EXCEEDING FIVE ACRES BEFORE A FIVE-YEAR RENEWAL PERMIT IS ISSUED, UNLESS OTHERWISE REQUIRED BY THE PLANNING COMMISSION. IF THE MATERIAL SITE IS ONE ACRE OR LESS IN SIZE AND HAS BEEN GRANTED A CLUP DUE TO EXCAVATION IN THE WATER TABLE, RECLAMATION MUST BE PERFORMED AS SPECIFIED BY THE PLANNING COMMISSION OR PLANNING DIRECTOR IN THE CONDITIONAL USE OR COUNTER PERMIT] within the time period approved with the reclamation plan so as to leave the land in a stable condition. Bonding shall be required at \$2,000.00 per acre for all acreage included in the current five-year reclamation plan. In the alternative, the planning director may accept a civil engineer's estimate for determining the amount of bonding. If the applicant is bonded with the state, the borough's bonding requirement is waived. Compliance with reclamation plans shall be enforced under KPB 21.50.

C. The following measures must be considered in the [PREPARING] preparation, approval and [IMPLEMENTING] implementation of the reclamation plan, although not all will be applicable to every reclamation plan.

1. Topsoil that is not promptly redistributed to an area being reclaimed will be separated and stockpiled for future use. [THIS MATERIAL WILL BE PROTECTED FROM EROSION AND CONTAMINATION BY ACIDIC OR TOXIC MATERIALS AND PRESERVED IN A CONDITION SUITABLE FOR LATER USE.]
2. The area will be backfilled, graded and recontoured using strippings, overburden, and topsoil [TO A CONDITION THAT ALLOWS FOR THE REESTABLISHMENT OF RENEWABLE RESOURCES ON THE SITE WITHIN A REASONABLE PERIOD OF TIME. IT WILL BE STABILIZED TO A CONDITION THAT WILL ALLOW SUFFICIENT MOISTURE FOR REVEGETATION] so that it will be stabilized to a condition that will allow for the revegetation as required by KPB 21.29.060(B).
3. [SUFFICIENT QUANTITIES OF STOCKPILED OR IMPORTED TOPSOIL WILL BE SPREAD OVER THE RECLAIMED AREA TO A DEPTH OF FOUR INCHES TO PROMOTE NATURAL PLANT GROWTH THAT CAN REASONABLY BE EXPECTED TO REVEGETATE THE AREA WITHIN FIVE YEARS. THE APPLICANT MAY USE THE EXISTING NATURAL ORGANIC BLANKET REPRESENTATIVE OF THE PROJECT AREA IF THE SOIL IS FOUND TO HAVE AN ORGANIC CONTENT OF 5% OR MORE AND MEETS THE SPECIFICATION OF CLASS B TOPSOIL REQUIREMENTS AS SET BY ALASKA TEST METHOD (ATM) T-6.] The [MATERIAL] topsoil used for reclamation shall be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes

greater than 2:1 require special consideration and design for stabilization by a licensed engineer.

4. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation shall be removed from the site, buried or burned. Topsoil and other organics will be spread on the backfilled surface to inhibit erosion and promote natural revegetation.
5. [PEAT AND T]Topsoil mine operations shall ensure a minimum of [TWO] four inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).
6. Ponding may be used as a reclamation method as approved by the planning commission.

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

#### **21.29.070. Permit extension and revocation.**

- A. Conditional land use permittees must submit a request in writing for permit extension every five years after the permit is issued. Requests for permit extension must be made at least 30 days prior to permit expiration. Counter permittees must submit any request for a 12-month extension at least 30 days prior to the expiration of the original 12-month permit period.
- B. A permit extension certificate for a CLUP may be granted by the planning director after 5 years, and after one year for a counter permit where no modification to operations or conditions are proposed.
- C. Permit extension may be denied if: (1) reclamation required by this chapter and the original permit has not been performed; (2) the permittee is otherwise in noncompliance with the original permit conditions; or (3) the permittee has had a permit violation in the last two years and has not fulfilled compliance requests.
- D. A modification application shall be processed pursuant to KPB 21.29.030-050 with public notice given as provided by KPB 21.25.060 when operators request modification of their permit conditions based on changes in operations set forth in the modification application.
- E. There shall be no fee for permit extensions approved by the planning director. The fee for a permit modification processed under KPB



21.29.070(D) will be the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.

- F. Failure to submit a request for extension will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KPB 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.
- G. Permits may be revoked pursuant to KPB 21.50. 21.29.080. - Permit termination.

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

#### **21.29.090. Permit modifications.**

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

#### **21.29.100. Recordation.**

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

#### **21.29.110. Violations.**

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

#### **21.29.120. Prior existing uses.**

- A. Material sites are not held to the standards and conditions of a CLUP if a prior existing use (PEU) determination was granted for the parcel in accordance with KPB 21.29.120(B). To qualify as a PEU, a parcel's use as a material site must have commenced or have been operated after May 21, 1986, and prior to May 21, 1996, provided that the subject use continues in the same location. In no event shall a prior existing use be expanded beyond the smaller of the lot, block, or tract lines as they existed on May 21, 1996. If a parcel is further subdivided after May 21, 1996, the pre-existing use may not be expanded to any lot, tract, or parcel where extraction had not occurred before or on February 16, 1999. If a parcel is subdivided where extraction has already occurred, the prior existing use is considered abandoned, and a CLUP must be obtained for each parcel intended for further material site operations. The parcel owner may overcome this presumption of abandonment by showing that the subdivision is not inconsistent with material site operation. If a parcel subject to a prior existing use is conveyed, the prior existing use survives the conveyance.
- B. Owners of sites must have applied to be registered as a prior existing use prior to January 1, 2001.
- C. [ANY PRIOR EXISTING USE THAT HAS NOT OPERATED AS A MATERIAL SITE BETWEEN MAY 21, 1996, AND MAY 21, 2011, IS CONSIDERED ABANDONED AND MUST THEREAFTER COMPLY WITH THE PERMIT REQUIREMENTS OF THIS CHAPTER. THE PLANNING DIRECTOR SHALL DETERMINE WHETHER A PRIOR EXISTING USE HAS BEEN ABANDONED. AFTER GIVING NOTICE TO THE PARCEL OWNER THAT A PEU IS CONSIDERED ABANDONED, A PARCEL OWNER MAY PROTEST THE TERMINATION OF THE PEU BY FILING WRITTEN NOTICE WITH THE PLANNING DIRECTOR ON A FORM PROVIDED BY THE PLANNING DEPARTMENT. WHEN A PROTEST BY A PARCEL OWNER IS FILED, NOTICE AND AN OPPORTUNITY TO MAKE WRITTEN COMMENTS REGARDING PRIOR EXISTING USE STATUS SHALL BE ISSUED TO OWNERS OF PROPERTY WITHIN A ONE-HALF MILE RADIUS OF THE PARCEL BOUNDARIES OF THE SITE. THE OWNER OF THE PARCEL SUBJECT TO THE PRIOR EXISTING USE MAY SUBMIT WRITTEN INFORMATION, AND THE PLANNING DIRECTOR MAY GATHER AND CONSIDER ANY INFORMATION RELEVANT TO WHETHER A MATERIAL SITE HAS OPERATED. THE PLANNING DIRECTOR MAY CONDUCT A HEARING IF HE OR SHE BELIEVES IT WOULD ASSIST THE DECISION-MAKING PROCESS. THE PLANNING DIRECTOR SHALL ISSUE A WRITTEN DETERMINATION WHICH SHALL BE DISTRIBUTED TO ALL PERSONS MAKING WRITTEN COMMENTS. THE PLANNING DIRECTOR'S DECISION REGARDING TERMINATION OF THE PRIOR EXISTING USE STATUS MAY BE APPEALED TO THE PLANNING COMMISSION WITHIN 15 DAYS OF THE DATE OF THE NOTICE OF DECISION.]

The owner of a material site that has been granted a PEU determination shall provide proof of compliance with AS 27.19.030 – 050 concerning

reclamation to the planning department no later than July 1, 2021. The proof shall consist of an Alaska Department of Natural Resources (DNR) approved reclamation plan and receipt for bonding or a letter of intent filed with DNR.

1. The planning department may request proof of continued compliance with AS 27.19.030 – 050 on an annual basis.
2. Pursuant to KPB 21.29.110 the enforcement process and remedies set forth in KPB 21.50 shall govern if the proof that the statutory requirements contained in AS 27.19.030-050 is not provided to the planning department.

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

**21.50.055. Fines.**

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

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

KPB 21.18.071	Failure to obtain staff permit/Violation of staff permit/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.072	Failure to obtain limited commercial activity permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.075	Prohibited use or structure/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.081	Failure to obtain Conditional Use Permit/Violation of Conditional Use Permit Condition/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.090	Failure to obtain prior existing use/structure permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.135(C)	Violation of emergency permit conditions/anadromous stream habitat protection	\$300.00
KPB 21.25.040	Failure to Obtain a Permit/Material Site/Correctional community residential center/Concentrated Animal Feeding Operation	\$300.00
KPB 21.28.030	Violation of permit conditions/Concentrated Animal Feeding Operations	\$300.00
KPB 21.29.020	Failure to Obtain a counter permit/Material Site Permits	\$300.00
KPB 21.29.050	Violation of Conditional Land Use Permit Conditions/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
KPB 21.29.060	Violation of Reclamation Plan/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
<u>KPB 21.29.120</u>	<u>Failure to Provide Reclamation Plan and Proof of Bonding or Letter of Intent</u>	<u>\$300.00</u>
KPB 21.44.100	Violation of Pre-existing structures/Local Option Zoning	\$300.00
KPB 21.44.110(D)	Prohibited expansion of nonconforming use/Local Option Zoning	\$300.00

KPB 21.44.110(E)	Prohibited Change in Use/Local Option Zoning	\$300.00
KPB 21.44.110(G)	Violation of Conditions on Nonconforming Use/Local Option Zoning	\$300.00
KPB 21.44.130(C)(D)	Violation of Home Occupation Standards and Conditions/Local Option Zoning	\$300.00
KPB 21.44.130(F)	Disallowed Home Occupation/Local Option Zoning	\$300.00
KPB 21.44.135	Failure to file development notice	\$300.00
KPB 21.44.160(A)(B)	Prohibited use	\$300.00
KPB 21.44.160(C)	Violation of Development Standards/Single Family Zoning/Local Option Zoning	\$300.00
KPB 21.44.165(A)(B)	Prohibited use	\$300.00
KPB 21.44.165(C)	Violation of Development Standards/Small Lot Residential Zoning/Local Option Zoning	\$300.00
KPB 21.44.170(A)(B)	Prohibited use	\$300.00
KPB 21.44.170(C)	Violation of Development Standards/Rural Residential District/Local Option Zoning	\$300.00
KPB 21.44.175(B)(C)	Prohibited Use	\$300.00
KPB 21.44.175(D)	Violation of Development Standards/Residential Waterfront	\$300.00
KPB 21.44.180(A)(B)	Prohibited Use	\$300.00
KPB 21.44.180(C)	Violation of Development Standards/Multi-Family Residential District/Local Option Zoning	\$300.00
KPB 21.44.190(A)(B)	Prohibited Use	\$300.00
KPB 21.44.190(C)	Violation of Development Standards/Industrial District/Local Option Zoning	\$300.00

KPB 21.46.030(b)	Failure to maintain bear-resistant garbage cans/Local option zone/Birch and Grove Ridge subdivisions Rural Residential District	\$300.00
KPB 21.50.100(F)	Removal of posted enforcement notice	\$300.00
KPB 21.50.100(G)	Violation of enforcement notice	\$1,000.00
KPB 21.50.130(I)	Violation of an enforcement order	\$1,000.00

**SECTION 4.** That this ordinance shall become effective upon its enactment.

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

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Kelly Cooper, Assembly President

ATTEST:

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Johni Blankenship, MMC, Borough Clerk

Yes: Dunne, Johnson, Cooper

No: Bjorkman, Blakeley, Carpenter, Cox, Hibbert, Smalley

Absent: None

Introduced by:	Mayor, Johnson
Date:	12/07/21
Hearing:	01/18/22
Action:	Postponed as Amended to 02/01/22
Vote:	5 Yes, 3 No, 1 Absent
Date:	02/01/22
Action:	Tabled
Vote:	9 Yes, 0 No, 0 Absent

## KENAI PENINSULA BOROUGH ORDINANCE 2021-41

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

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



- WHEREAS,** Goal 1 of the Mining and Minerals Processing section of the 1990 Kenai Peninsula Borough Coastal Management Program is to provide opportunities to explore, extract and process minerals, sand and gravel resources, while protecting environmental quality and other resource users; and
- WHEREAS,** an assembly subcommittee was formed in 2005 to review the material site code; and
- WHEREAS,** Ordinance 2006-01 (Substitute) codified as KPB 21.29 was adopted in 2006 after consideration of the subcommittee's report; and
- WHEREAS,** the planning department has been administering Ordinance 2006-01 (Substitute), codified as KPB 21.29 for 13 years; and
- WHEREAS,** KPB 21.25.040 requires a permit for the commencement of certain land uses within the rural district of the Kenai Peninsula Borough; and
- WHEREAS,** the planning department has recognized that certain provisions of the material site ordinance could be better clarified for the operators, public, and staff; and
- WHEREAS,** the planning commission and planning department received comments expressing concerns about dust, noise, safety, and aesthetics; and
- WHEREAS,** approximately 253 registered prior existing use material sites and approximately 99 conditional land use permits for material sites have been granted since 1996;
- WHEREAS,** the planning department receives numerous complaints regarding unreclaimed parcels registered as nonconforming prior existing material sites which have not been regulated by KPB; and
- WHEREAS,** the assembly established a material site work group by adoption of Resolution 2018-004 (Substitute) to engage in a collaborative discussion involving the public and industry to make recommendations regarding the material site code; and
- WHEREAS,** assembly Resolution 2018-025 extended the deadline for the final report to be submitted to the assembly, administration and planning commission to April 30, 2019; and
- WHEREAS,** certain additional conditions placed on material site permits would facilitate a reduction in the negative secondary impacts of material sites, e.g. dust, noise, safety, and unsightliness of material sites; and
- WHEREAS,** at its regularly scheduled meeting of November 12, 2019, the planning commission recommended approval by unanimous consent;

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

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

**21.25.030. - Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Correctional community residential center (CCRC)* means a community residential center, other than a correctional institution, for the short-term or temporary detention of prisoners in transition from a correctional institution, performing restitution, or undergoing rehabilitation or recovery from a legal infirmity. CCRCs may not be used for detention of prisoners who pose a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision. The determination of whether a prisoner poses a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision shall be made by the commissioner of corrections for state prisoners and the United States Attorney General, or the U.S. Director of Bureau of Prisons for federal prisoners.

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

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

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

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

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

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

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

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

*Multi-purpose senior center* is a facility where persons 60 years of age or older are provided with services and activities suited to their particular needs. The

services and activities may include, but are not limited to, health examinations, legal assistance, recreation programs, general social activities, telephone reassurance programs, nutrition classes, meals at minimum cost, counseling, protective services, programs for shut-ins and education programs, and that complies with Alaska Statutes 47.60.010—47.60.090, as currently written or hereafter amended.

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

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

*Prisoner* means:

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

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

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

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

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

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

*Stable condition* means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of

renewable resources on the site within a reasonable period of time by natural processes.

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

*Topsoil* means material suitable for vegetative growth.

*Vicinity* means the same as the area of notification.

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

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

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

#### **CHAPTER 21.29. MATERIAL SITE PERMITS**

##### **21.29.010. Material extraction exempt from obtaining a permit.**

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

**21.29.020. Material extraction and activities requiring a permit.**

- A. *Counter permit.* A counter permit is required for material extraction which disturbs no more than 2.5 cumulative acres and does not enter the water table. Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension.
- B. *Conditional land use permit.* A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. A CLUP is required for materials processing. A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPS and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.

**21.29.030. Application procedure.**

- A. In order to obtain a counter permit or CLUP, an applicant shall first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application shall include the following items:
  - 1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
  - 2. Expected life span of the material site;
  - 3. A buffer plan consistent with KPB 21.29.050(A)(2);
  - 4. Reclamation plan consistent with KPB 21.29.060;
  - 5. The depth of excavation;
  - 6. Type of material to be extracted and type of equipment to be used;
  - 7. Any voluntary permit conditions the applicant proposes. Failure to include a proposed voluntary permit condition in the application does not preclude the applicant from proposing or agreeing to voluntary permit conditions at a later time;



8. Surface water protection measures, if any, for adjacent properties designed by a civil engineer, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;
9. A site plan and field verification prepared by a professional surveyor licensed and registered in the State of Alaska, including the following information:
  - a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
  - b. Proposed buffers consistent with KPB 21.29.050(A)(2), or alternate buffer plan;
  - c. Identification of all encumbrances, including, but not limited to easements;
  - d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to the issuance of the material site permit;
  - e. Anticipated haul routes;
  - f. Location and [DEPTH] elevation of test holes, and depth of groundwater, if encountered between May and December. At least one test hole per ten acres of excavated area is required to be dug. The test holes shall be at least four feet below the proposed depth of excavation;
  - g. Location of wells of adjacent property owners within 300 feet of the proposed parcel boundary;
  - h. Location of any water body on the parcel, including the location of any riparian wetland as determined by ["WETLAND MAPPING AND CLASSIFICATION OF THE KENAI LOWLAND, ALASKA" MAPS CREATED BY THE KENAI WATERSHED FORUM] best available data;
  - [i. SURFACE WATER PROTECTION MEASURES FOR ADJACENT PROPERTIES, INCLUDING THE USE OF DIVERSION CHANNELS, INTERCEPTION DITCHES, ON-SITE COLLECTION DITCHES, SEDIMENT PONDS AND TRAPS, AND SILT FENCE; PROVIDE DESIGNS FOR SUBSTANTIAL STRUCTURES; INDICATE WHICH

STRUCTURES WILL REMAIN AS PERMANENT FEATURES AT THE CONCLUSION OF OPERATIONS, IF ANY;]

[J]i. Location of any processing areas on parcel, if applicable;

[K]j. North arrow;

[L]k. The scale to which the site plan is drawn;

[M]l. Preparer's name, date and seal;

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

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

#### **21.29.040. Standards for sand, gravel or material sites.**

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:

1. Protects against the lowering of water sources serving other properties;
2. Protects against physical damage to [OTHER] adjacent properties;
3. [MINIMIZES] Protects against off-site movement of dust;
4. [MINIMIZES] Protects against noise disturbance to other properties;
5. [MINIMIZES] Protects against visual impacts of the material site; [AND]
6. Provides for alternate post-mining land uses[.];
7. Protects Receiving Waters against adverse effects to fish and wildlife habitat;
8. Protects against traffic impacts; and

9. Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.

**21.29.050. Permit conditions.**

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

1. [*PARCEL*]Permit boundaries. [ALL BOUNDARIES OF THE SUBJECT PARCEL] The buffers and any easements or right-of-way abutting the proposed permit area shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter. Field verification and staking will require the services of a professional land surveyor. Stakes shall be in place [AT TIME OF APPLICATION]prior to issuance of the permit.

- [2. *BUFFER ZONE.* A BUFFER ZONE SHALL BE MAINTAINED AROUND THE EXCAVATION PERIMETER OR PARCEL BOUNDARIES. WHERE AN EASEMENT EXISTS, A BUFFER SHALL NOT OVERLAP THE EASEMENT, UNLESS OTHERWISE CONDITIONED BY THE PLANNING DIRECTOR OR PLANNING COMMISSION.

- A. THE BUFFER ZONE SHALL PROVIDE AND RETAIN A BASIC BUFFER OF:

- I. 50 FEET OF UNDISTURBED NATURAL VEGETATION, OR

- II. A MINIMUM SIX-FOOT EARTHEN BERM WITH AT LEAST A 2:1 SLOPE, OR

- III. A MINIMUM SIX-FOOT FENCE.

- B. A 2:1 SLOPE SHALL BE MAINTAINED BETWEEN THE BUFFER ZONE AND EXCAVATION FLOOR ON ALL INACTIVE SITE WALLS. MATERIAL FROM THE AREA DESIGNATED FOR THE 2:1 SLOPE MAY BE REMOVED IF SUITABLE, STABILIZING MATERIAL IS REPLACED WITHIN 30 DAYS FROM THE TIME OF REMOVAL.

- C. THE PLANNING COMMISSION OR PLANNING DIRECTOR SHALL DESIGNATE ONE OR A COMBINATION OF THE ABOVE AS IT DEEMS APPROPRIATE. THE VEGETATION AND FENCE SHALL BE OF SUFFICIENT HEIGHT AND DENSITY TO PROVIDE VISUAL AND NOISE SCREENING OF THE PROPOSED USE AS DEEMED

APPROPRIATE BY THE PLANNING COMMISSION OR PLANNING DIRECTOR.

- D. BUFFERS SHALL NOT CAUSE SURFACE WATER DIVERSION WHICH NEGATIVELY IMPACTS ADJACENT PROPERTIES OR WATER BODIES. SPECIFIC FINDINGS ARE REQUIRED TO ALTER THE BUFFER REQUIREMENTS OF KPB 21.29.050(A)(2)(A) IN ORDER TO MINIMIZE NEGATIVE IMPACTS FROM SURFACE WATER DIVERSION. FOR PURPOSES OF THIS SECTION, SURFACE WATER DIVERSION IS DEFINED AS EROSION, FLOODING, DEHYDRATION OR DRAINING, OR CHANNELING. NOT ALL SURFACE WATER DIVERSION RESULTS IN A NEGATIVE IMPACT.
- E. AT ITS DISCRETION, THE PLANNING COMMISSION MAY WAIVE BUFFER REQUIREMENTS WHERE THE TOPOGRAPHY OF THE PROPERTY OR THE PLACEMENT OF NATURAL BARRIERS MAKES SCREENING NOT FEASIBLE OR NOT NECESSARY. BUFFER REQUIREMENTS SHALL BE MADE IN CONSIDERATION OF AND IN ACCORDANCE WITH EXISTING USES OF ADJACENT PROPERTY AT THE TIME OF APPROVAL OF THE PERMIT. THERE IS NO REQUIREMENT TO BUFFER THE MATERIAL SITE FROM USES WHICH COMMENCE AFTER THE APPROVAL OF THE PERMIT.]

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

- a. A buffer area of a maximum of 100 feet shall be established between the area of excavation and the parcel boundaries. The buffer area may include one or more of the following: undisturbed natural vegetation, a minimum six-foot fence, a minimum six-foot earthen berm with at least a 2/1 slope or a combination thereof.
- b. A 2:1 slope shall be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
- c. Where an easement exists, a buffer shall not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable.
- d. The vegetation and fence shall be of sufficient height and density to provide visual and noise screening of the proposed

use as deemed appropriate by the planning commission or the planning director.

- e. The buffer area may be reduced where the planning commission or planning director, as applicable, has approved an alternate buffer plan. The alternate buffer plan must consist of natural undisturbed vegetation, a minimum six-foot berm, or a minimum six-foot fence or a combination thereof; unless the permittee proposes another solution approved by the planning commission or planning director, as applicable, to meet this condition.
- f. The buffer requirements may be waived by the planning commission or planning director, as applicable, where the topography of the property or the placement of natural barriers makes screening not feasible or unnecessary.
- g. There is no requirement to buffer a material site from uses that commence after approval of the permit.
- h. When a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required.

3. *Processing.* In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of [OF ADJACENT PROPERTY AT THE TIME] the properties in the vicinity at the time of approval of the permit.

4. *Water source separation.*

- a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.
- b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation [FROM]between extraction operations and the seasonal high water table be maintained.
- c. All CLUPS shall be issued with a condition which requires that a [TWO] four-foot vertical separation [FROM]between

extraction operations and the seasonal high water table be maintained.

- d. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.

5. *Excavation in the water table.* Excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission based on the following:

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

6. *Waterbodies.*

- a. An undisturbed buffer shall be left and no earth material extraction activities shall take place within [100] 200 linear feet from excavation limits and the ordinary high water level of surface water bodies such as a lake, river, stream, [OR OTHER WATER BODY, INCLUDING] riparian wetlands and mapped floodplains as defined in KPB 21.06. This regulation shall not apply to man-made waterbodies being constructed during the course of the materials extraction activities. In order to prevent

discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.

- b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.
7. *Fuel storage.* Fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
8. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads as required by KPB 14.40.175 and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
9. *Subdivision.* Any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit. The planning director may issue a written exemption from the amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a material site and all original permit conditions can be met.
10. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
11. *Hours of operation.* [ROCK CRUSHING EQUIPMENT SHALL NOT BE OPERATED BETWEEN 10:00 P.M. AND 6:00 A.M.]
  - a. Processing equipment shall not be operated between 7:00 p.m. and 6:00 a.m.
  - b. The planning commission may grant exceptions to increase the hours of operation and processing based on surrounding land uses, topography, screening the material site from properties in the vicinity and conditions placed on the permit by the planning commission to mitigate the noise, dust and visual impacts caused by the material site.



12. *Reclamation.*

- a. Reclamation shall be consistent with the reclamation plan approved by the planning commission or planning director as appropriate in accord with KPB 21.29.060.
- b. [AS A CONDITION OF ISSUING THE PERMIT, THE APPLICANT SHALL SUBMIT A RECLAMATION PLAN AND POST A BOND TO COVER THE ANTICIPATED RECLAMATION COSTS IN AN AMOUNT TO BE DETERMINED BY THE PLANNING DIRECTOR. THIS BONDING REQUIREMENT SHALL NOT APPLY TO SAND, GRAVEL OR MATERIAL SITES FOR WHICH AN EXEMPTION FROM STATE BOND REQUIREMENTS FOR SMALL OPERATIONS IS APPLICABLE PURSUANT TO AS 27.19.050.] The applicant shall operate the material site consistent with the approved reclamation plan and provide bonding pursuant to 21.29.060(B). This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.

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

14. [~~VOLUNTARY~~]Volunteered *permit conditions.* Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission for CLUPs or the planning director for counter permits. Such conditions must be consistent with the standards set forth in KPB 21.29.040(A). Planning commission approval of such conditions shall be contingent upon a finding that the conditions will be in the best interest of the borough and the surrounding property owners. [~~VOLUNTARY~~] Volunteered permit

conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in [VOLUNTARY] volunteered permit conditions may be proposed [AT] by permit [RENEWAL OR AMENDMENT] modification.

15. *Signage.* For permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access, whichever is more visible. Sign dimensions shall be no more than 15" by 15" and must contain the following information: the phrase "Permitted Material Site" along with the permittee's business name and a contact phone number.
16. *Appeal.* No clearing of vegetation shall occur within the 100-foot maximum buffer area from the permit boundary nor shall the permit be issued or operable until the deadline for the appeal, pursuant to KPB 21.20, has expired.
17. *Sound level.*
  - a. No sound resulting from the materials extraction activities shall create a sound level, when measured at or within the property boundary of the adjacent land, that exceeds 75 dB(A).
  - b. For any sound that is of short duration between the hours of 7 a.m. and 7 p.m. the levels may be increased by:
    - i. Five dB(A) for a total of 15 minutes in any one hour; or
    - ii. Ten dB(A) for a total of five minutes in any hour; or
    - iii. Fifteen db(A) for a total of one and one-half minutes in any one-hour period.
  - c. At its discretion, the planning commission or planning director, as applicable, may reduce or waive the sound level requirements on any or all property boundaries. Sound level requirements shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
  - d. Mandatory condition KPB 21.29.050(A)(17) shall expire 365 days from adoption of KPB 21.29.050(A)(17) unless extended or modified by the assembly.

18. Reverse signal alarms. Reverse signal alarms, used at the material site on loaders, excavators, and other earthmoving equipment shall be more technically advanced devices; such as, a multi-frequency “white noise” alarms rather than the common, single (high-pitch) tone alarms. At its discretion, the planning commission or planning director, as applicable, may waive this requirement or a portion of this requirement. The waiver of this requirement shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
19. Ingress and egress. The planning commission or planning director may determine the points of ingress and egress for the material site. The permittee is not required to construct haul routes outside the parcel boundaries of the material site. Driveway authorization must be acquired, from either the state through an “Approval to Construct” or a borough road service area as appropriate, prior to issuance of a material site permit when accessing a public right-of-way.
20. Dust suppression. Dust suppression shall be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on haul routes. Based on surrounding land uses the planning commission or planning director, as applicable, may waive or reduce the requirement for dust suppression on haul routes.
21. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8) must be approved by a licensed civil engineer.
22. Groundwater elevation. All material sites must maintain one monitoring tube per ten acres of excavated area four feet below the proposed excavation.
23. Setback. Material site excavation areas shall be 250-feet from the property boundaries of any local option zoning district, existing public school ground, private school ground, college campus, child care facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation shall be included in the 250-foot setback.

#### **21.29.055. Decision.**

The planning commission or planning director, as applicable, shall approve permit applications meeting the mandatory conditions or shall disapprove permit applications that do not meet the mandatory conditions. The decision shall include written findings supporting the decision, and when applicable, there shall be written findings supporting any site-specific alterations to the mandatory condition as

specifically allowed by KPB 21.29.050(A)(2)(a), (2)(c), (2)(d), (2)(e), (2)(g), (3), (4)(d), (5), (11)(b), (12), (14), (17)(c), (18), (19), and (20) and as allowed for the KPB 21.29.060 reclamation plan.

#### **21.29.060. Reclamation plan.**

- A. All material site permit applications require an overall reclamation plan along with a five-year reclamation plan. A site plan for reclamation shall be required including a scaled drawing with finished contours. A five-year reclamation plan must be submitted with a permit extension request.
- B. The applicant shall revegetate with a non-invasive plant species and reclaim all disturbed land [UPON EXHAUSTING THE MATERIAL ON-SITE, OR WITHIN A PRE-DETERMINED TIME PERIOD FOR LONG-TERM ACTIVITIES, SO AS TO LEAVE THE LAND IN A STABLE CONDITION. RECLAMATION MUST OCCUR FOR ALL EXHAUSTED AREAS OF THE SITE EXCEEDING FIVE ACRES BEFORE A FIVE-YEAR RENEWAL PERMIT IS ISSUED, UNLESS OTHERWISE REQUIRED BY THE PLANNING COMMISSION. IF THE MATERIAL SITE IS ONE ACRE OR LESS IN SIZE AND HAS BEEN GRANTED A CLUP DUE TO EXCAVATION IN THE WATER TABLE, RECLAMATION MUST BE PERFORMED AS SPECIFIED BY THE PLANNING COMMISSION OR PLANNING DIRECTOR IN THE CONDITIONAL USE OR COUNTER PERMIT] within the time period approved with the reclamation plan so as to leave the land in a stable condition. Bonding shall be required at \$2,000.00 per acre for all acreage included in the current five-year reclamation plan. In the alternative, the planning director may accept a civil engineer's estimate for determining the amount of bonding. If the applicant is bonded with the state, the borough's bonding requirement is waived. Compliance with reclamation plans shall be enforced under KPB 21.50.
- C. The following measures must be considered in the [PREPARING] preparation, approval and [IMPLEMENTING] implementation of the reclamation plan, although not all will be applicable to every reclamation plan.
  - 1. Topsoil that is not promptly redistributed to an area being reclaimed will be separated and stockpiled for future use. [THIS MATERIAL WILL BE PROTECTED FROM EROSION AND CONTAMINATION BY ACIDIC OR TOXIC MATERIALS AND PRESERVED IN A CONDITION SUITABLE FOR LATER USE.]
  - 2. The area will be backfilled, graded and recontoured using strippings, overburden, and topsoil [TO A CONDITION THAT ALLOWS FOR THE REESTABLISHMENT OF RENEWABLE RESOURCES ON THE SITE WITHIN A REASONABLE PERIOD OF TIME. IT WILL BE STABILIZED TO A CONDITION THAT WILL ALLOW SUFFICIENT MOISTURE FOR

REVEGETATION] so that it will be stabilized to a condition that will allow for the revegetation as required by KPB 21.29.060(B).

3. [SUFFICIENT QUANTITIES OF STOCKPILED OR IMPORTED TOPSOIL WILL BE SPREAD OVER THE RECLAIMED AREA TO A DEPTH OF FOUR INCHES TO PROMOTE NATURAL PLANT GROWTH THAT CAN REASONABLY BE EXPECTED TO REVEGETATE THE AREA WITHIN FIVE YEARS. THE APPLICANT MAY USE THE EXISTING NATURAL ORGANIC BLANKET REPRESENTATIVE OF THE PROJECT AREA IF THE SOIL IS FOUND TO HAVE AN ORGANIC CONTENT OF 5% OR MORE AND MEETS THE SPECIFICATION OF CLASS B TOPSOIL REQUIREMENTS AS SET BY ALASKA TEST METHOD (ATM) T-6.] The [MATERIAL] topsoil used for reclamation shall be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by a licensed engineer.
4. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation shall be removed from the site, buried or burned. Topsoil and other organics will be spread on the backfilled surface to inhibit erosion and promote natural revegetation.
5. [PEAT AND T]Topsoil mine operations shall ensure a minimum of [TWO] four inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).
6. Ponding may be used as a reclamation method as approved by the planning commission.

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

#### **21.29.070. Permit extension and revocation.**

- A. Conditional land use permittees must submit a request in writing for permit extension every five years after the permit is issued. Requests for permit extension must be made at least 30 days prior to permit expiration. Counter permittees must submit any request for a 12-month extension at least 30 days prior to the expiration of the original 12-month permit period.
- B. A permit extension certificate for a CLUP may be granted by the planning director after 5 years, and after one year for a counter permit where no modification to operations or conditions are proposed.

- C. Permit extension may be denied if: (1) reclamation required by this chapter and the original permit has not been performed; (2) the permittee is otherwise in noncompliance with the original permit conditions; or (3) the permittee has had a permit violation in the last two years and has not fulfilled compliance requests.
- D. A modification application shall be processed pursuant to KPB 21.29.030-050 with public notice given as provided by KPB 21.25.060 when operators request modification of their permit conditions based on changes in operations set forth in the modification application.
- E. There shall be no fee for permit extensions approved by the planning director. The fee for a permit modification processed under KPB 21.29.070(D) will be the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.
- F. Failure to submit a request for extension will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KPB 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.
- G. Permits may be revoked pursuant to KPB 21.50. 21.29.080. - Permit termination.

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

#### **21.29.090. Permit modifications.**

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

#### **21.29.100. Recordation.**

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

#### **21.29.110. Violations.**

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

#### **21.29.120. Prior existing uses.**

- A. Material sites are not held to the standards and conditions of a CLUP if a prior existing use (PEU) determination was granted for the parcel in accordance with KPB 21.29.120(B). To qualify as a PEU, a parcel's use as a material site must have commenced or have been operated after May 21, 1986, and prior to May 21, 1996, provided that the subject use continues in the same location. In no event shall a prior existing use be expanded beyond the smaller of the lot, block, or tract lines as they existed on May 21, 1996. If a parcel is further subdivided after May 21, 1996, the pre-existing use may not be expanded to any lot, tract, or parcel where extraction had not occurred before or on February 16, 1999. If a parcel is subdivided where extraction has already occurred, the prior existing use is considered abandoned, and a CLUP must be obtained for each parcel intended for further material site operations. The parcel owner may overcome this presumption of abandonment by showing that the subdivision is not inconsistent with material site operation. If a parcel subject to a prior existing use is conveyed, the prior existing use survives the conveyance.
- B. Owners of sites must have applied to be registered as a prior existing use prior to January 1, 2001.
- C. [ANY PRIOR EXISTING USE THAT HAS NOT OPERATED AS A MATERIAL SITE BETWEEN MAY 21, 1996, AND MAY 21, 2011, IS CONSIDERED ABANDONED AND MUST THEREAFTER COMPLY WITH THE PERMIT REQUIREMENTS OF THIS CHAPTER. THE PLANNING DIRECTOR SHALL DETERMINE WHETHER A PRIOR EXISTING USE HAS BEEN ABANDONED. AFTER GIVING NOTICE TO THE PARCEL OWNER THAT A PEU IS CONSIDERED ABANDONED, A PARCEL OWNER MAY



PROTEST THE TERMINATION OF THE PEU BY FILING WRITTEN NOTICE WITH THE PLANNING DIRECTOR ON A FORM PROVIDED BY THE PLANNING DEPARTMENT. WHEN A PROTEST BY A PARCEL OWNER IS FILED, NOTICE AND AN OPPORTUNITY TO MAKE WRITTEN COMMENTS REGARDING PRIOR EXISTING USE STATUS SHALL BE ISSUED TO OWNERS OF PROPERTY WITHIN A ONE-HALF MILE RADIUS OF THE PARCEL BOUNDARIES OF THE SITE. THE OWNER OF THE PARCEL SUBJECT TO THE PRIOR EXISTING USE MAY SUBMIT WRITTEN INFORMATION, AND THE PLANNING DIRECTOR MAY GATHER AND CONSIDER ANY INFORMATION RELEVANT TO WHETHER A MATERIAL SITE HAS OPERATED. THE PLANNING DIRECTOR MAY CONDUCT A HEARING IF HE OR SHE BELIEVES IT WOULD ASSIST THE DECISION-MAKING PROCESS. THE PLANNING DIRECTOR SHALL ISSUE A WRITTEN DETERMINATION WHICH SHALL BE DISTRIBUTED TO ALL PERSONS MAKING WRITTEN COMMENTS. THE PLANNING DIRECTOR'S DECISION REGARDING TERMINATION OF THE PRIOR EXISTING USE STATUS MAY BE APPEALED TO THE PLANNING COMMISSION WITHIN 15 DAYS OF THE DATE OF THE NOTICE OF DECISION.]

The owner of a material site that has been granted a PEU determination shall provide proof of compliance with AS 27.19.030 – 050 concerning reclamation to the planning department no later than July 1, 2022. The proof shall consist of an Alaska Department of Natural Resources (DNR) approved reclamation plan and receipt for bonding or a letter of intent filed with DNR.

1. The planning department may request proof of continued compliance with AS 27.19.030 – 050 on an annual basis.
2. Pursuant to KPB 21.29.110 the enforcement process and remedies set forth in KPB 21.50 shall govern if the proof that the statutory requirements contained in AS 27.19.030-050 is not provided to the planning department.

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

**21.50.055. Fines.**

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

<b>CODE CHAPTER &amp; SECTION</b>	<b>VIOLATION DESCRIPTION</b>	<b>DAILY FINE</b>
KPB 20.10.030(A)	Offering land for sale without final plat approval	\$300.00
KPB 20.10.030(B)	Filing/recording unapproved subdivision/plat	\$300.00
KPB 20.10.030(C)	Violation of subdivision code or condition	\$300.00
KPB 21.05.040(C)	Violation of variance conditions	\$300.00
KPB 21.06.030(D)	Structure or activity prohibited by KPB 21.06	\$300.00
KPB 21.06.040	Failure to obtain a Development Permit/Floodplain Management	\$300.00
KPB 21.06.045	Failure to obtain a SMFDA Development Permit/Violation of SMFDA permit conditions/Floodplain Management	\$300.00
KPB 21.06.050	Violation of permit conditions/Floodplain Management	\$300.00
KPB 21.18.071	Failure to obtain staff permit/Violation of staff permit/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.072	Failure to obtain limited commercial activity permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.075	Prohibited use or structure/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.081	Failure to obtain Conditional Use Permit/Violation of Conditional Use Permit Condition/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.090	Failure to obtain prior existing use/structure permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.135(C)	Violation of emergency permit conditions/anadromous stream habitat protection	\$300.00

CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
KPB 21.25.040	Failure to Obtain a Permit/Material Site/Correctional community residential center/Concentrated Animal Feeding Operation	\$300.00
KPB 21.28.030	Violation of permit conditions/Concentrated Animal Feeding Operations	\$300.00
KPB 21.29.020	Failure to Obtain a counter permit/Material Site Permits	\$300.00
KPB 21.29.050	Violation of Conditional Land Use Permit Conditions/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
KPB 21.29.060	Violation of Reclamation Plan/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
<u>KPB 21.29.120</u>	<u>Failure to Provide Reclamation Plan and Proof of Bonding or Letter of Intent</u>	<u>\$300.00</u>
KPB 21.44.100	Violation of Pre-existing structures/Local Option Zoning	\$300.00
KPB 21.44.110(D)	Prohibited expansion of nonconforming use/Local Option Zoning	\$300.00
KPB 21.44.110(E)	Prohibited Change in Use/Local Option Zoning	\$300.00
KPB 21.44.110(G)	Violation of Conditions on Nonconforming Use/Local Option Zoning	\$300.00
KPB 21.44.130(C)(D)	Violation of Home Occupation Standards and Conditions/Local Option Zoning	\$300.00
KPB 21.44.130(F)	Disallowed Home Occupation/Local Option Zoning	\$300.00
KPB 21.44.135	Failure to file development notice	\$300.00
KPB 21.44.160(A)(B)	Prohibited use	\$300.00

<b>CODE CHAPTER &amp; SECTION</b>	<b>VIOLATION DESCRIPTION</b>	<b>DAILY FINE</b>
KPB 21.44.160(C)	Violation of Development Standards/Single Family Zoning/Local Option Zoning	\$300.00
KPB 21.44.165(A)(B)	Prohibited use	\$300.00
KPB 21.44.165(C)	Violation of Development Standards/Small Lot Residential Zoning/Local Option Zoning	\$300.00
KPB 21.44.170(A)(B)	Prohibited use	\$300.00
KPB 21.44.170(C)	Violation of Development Standards/Rural Residential District/Local Option Zoning	\$300.00
KPB 21.44.175(B)(C)	Prohibited Use	\$300.00
KPB 21.44.175(D)	Violation of Development Standards/Residential Waterfront	\$300.00
KPB 21.44.180(A)(B)	Prohibited Use	\$300.00
KPB 21.44.180(C)	Violation of Development Standards/Multi-Family Residential District/Local Option Zoning	\$300.00
KPB 21.44.190(A)(B)	Prohibited Use	\$300.00
KPB 21.44.190(C)	Violation of Development Standards/Industrial District/Local Option Zoning	\$300.00
KPB 21.46.030(b)	Failure to maintain bear-resistant garbage cans/Local option zone/Birch and Grove Ridge subdivisions Rural Residential District	\$300.00
KPB 21.50.100(F)	Removal of posted enforcement notice	\$300.00
KPB 21.50.100(G)	Violation of enforcement notice	\$1,000.00
KPB 21.50.130(I)	Violation of an enforcement order	\$1,000.00

**SECTION 4.** That this ordinance shall become effective upon its enactment.

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

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Brent Johnson, Assembly President

ATTEST:

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Johni Blankenship, MMC, Borough Clerk

01/18/22 Vote on motion to postpone to 02/01/22:

Yes: Bjorkman, Derkevorkian, Elam, Tupper, Johnson

No: Chesley, Cox, Ecklund

Absent: Hibbert

02/01/22 Vote on motion to table:

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

No: None

Absent: None

Introduced by:	Elam, Derkevorkian
Substitute Introduced:	02/01/22
O2021-41 (Mayor, Johnson)	See Original Ordinance for Prior History
Action:	Tabled
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2021-41  
(ELAM, DERKEVORKIAN) SUBSTITUTE**

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

- WHEREAS,** Goal 2, Focus Area: Land Use, Objective A of the 2019 Kenai Peninsula Borough Comprehensive Plan is to establish policies to minimize land use conflicts, protect natural systems, and support individual land use freedoms; and
- WHEREAS,** Goal 2, Focus Area: Land Use, Objective A, Strategy 2 of the 2019 Comprehensive Plan is to update the Borough’s existing conditional use regulations for material extraction to better address reoccurring land use conflicts; and
- WHEREAS,** Goal 2, Focus Area: Land Use, Objective A, Strategy 2a of the 2019 Comprehensive Plan is to clarify the broad purpose of the conditional use process and clear parameters for allowable conditional uses that include reasonable, project-specific conditions that reduce impacts on surrounding use; and
- WHEREAS,** Goal 2, Focus Area: Land Use, Objective A, Strategy 2d of the 2019 Comprehensive Plan is to complete improvements to the rules guiding gravel extraction, with the goal of providing an appropriate balance between providing access to affordable materials for development and quality of life for borough residents; and
- WHEREAS,** Goal 1 of the Mining and Minerals Processing section of the 1990 Kenai Peninsula Borough Coastal Management Program is to provide opportunities to explore, extract and process minerals, sand and gravel resources, while protecting environmental quality and other resource users; and
- WHEREAS,** an assembly subcommittee was formed in 2005 to review the material site code; and
- WHEREAS,** Ordinance 2006-01 (Substitute) codified as KPB 21.29 was adopted in 2006 after consideration of the subcommittee’s report; and
- WHEREAS,** the planning department has been administering Ordinance 2006-01 (Substitute), codified as KPB 21.29 for 13 years; and

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

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

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

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

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

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

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

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

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

**21.25.030. Definitions.**

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

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

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



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

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

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

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

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

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

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

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

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

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

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

*Correctional community residential center (CCRC)* means a community residential center, other than a correctional institution, for the short-term or temporary detention of prisoners in transition from a correctional institution, performing restitution, or undergoing rehabilitation or recovery from a legal infirmity. CCRCs may not be used for detention of prisoners who pose a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision. The determination of whether a prisoner poses a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision shall be made by the commissioner of corrections for state prisoners and the United States Attorney General, or the U.S. Director of Bureau of Prisons for federal prisoners.

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

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

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

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

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

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

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

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

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

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

*Prisoner* means:

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

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

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

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

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

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

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

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

*Topsoil* means material suitable for vegetative growth.

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

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

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

#### **CHAPTER 21.29. MATERIAL SITE PERMITS**

##### **21.29.010. Material extraction exempt from obtaining a permit.**

- A. Material extraction which disturbs an area of less than one acre that is not in a mapped flood plain or subject to 21.29.010(B), does not enter the water table, and does not cross property boundaries, does not require a permit. There will be no excavation within 20 feet of a right-of-way or within ten feet of a lot line.
- B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood

Service Area does not require a permit, however, operators subject to this exemption shall provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations.

- C. A prior existing use under KPB 21.29.120 does not require a material extraction permit, but a floodplain development permit is required for all activities within any mapped special flood hazard area.
- D. Material extraction incidental to site development does not require a permit when an approved site development plan is on file with the planning department. Site development plans are approved by the planning director and are valid for one year. The site development plan may be renewed on an annual basis subject to the planning director's approval.

#### **21.29.020. Material extraction and activities requiring a permit.**

- A. *Counter permit.* A counter permit is required for material extraction which disturbs no more than 2.5 cumulative acres and does not enter the water table. Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension.
- B. *Conditional land use permit.* A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. [A CLUP IS REQUIRED FOR MATERIALS PROCESSING.] A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPS and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling

#### **21.29.030. Application procedure.**

- A. In order to obtain a counter permit or CLUP, an applicant shall first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application shall include the following items:
  - 1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;

2. Expected life span of the material site;
3. A buffer plan consistent with KPB 21.29.050(A)(2);
4. Reclamation plan consistent with KPB 21.29.060;
5. The depth of excavation;
6. Type of material to be extracted and type of equipment to be used;
7. Any voluntary permit conditions the applicant proposes. Failure to include a proposed voluntary permit condition in the application does not preclude the applicant from proposing or agreeing to voluntary permit conditions at a later time;
8. Surface water protection measures, if any, for adjacent properties designed by a SWPPP certified individual, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;
9. A site plan prepared by the site operator and field verification prepared by a professional surveyor licensed and registered in the State of Alaska, including the following information:
  - a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
  - b. Proposed buffers consistent with KPB 21.29.050(A)(2), or alternate buffer plan;
  - c. Identification of all encumbrances, including, but not limited to easements;
  - d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to the issuance of the material site permit;
  - e. Anticipated haul routes;
  - f. Location and [DEPTH] elevation of test holes, and depth of groundwater, if encountered between May and December. At least one test hole per ten acres of excavated area is required to be dug.

- g. Location of wells of adjacent property owners within [300] 200 feet of the proposed parcel boundary;
- h. Location of any water body on the parcel,
- [I. SURFACE WATER PROTECTION MEASURES FOR ADJACENT PROPERTIES, INCLUDING THE USE OF DIVERSION CHANNELS, INTERCEPTION DITCHES, ON-SITE COLLECTION DITCHES, SEDIMENT PONDS AND TRAPS, AND SILT FENCE; PROVIDE DESIGNS FOR SUBSTANTIAL STRUCTURES; INDICATE WHICH STRUCTURES WILL REMAIN AS PERMANENT FEATURES AT THE CONCLUSION OF OPERATIONS, IF ANY;]
- [J]i. Location of any processing areas on parcel, if applicable;
- [K]j. North arrow;
- [L]k. The scale to which the site plan is drawn;
- [M]l. Preparer's name, date
- [N]m. Field verification shall include staking the boundary of the parcel at sequentially visible intervals. The planning director may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious or staking is unnecessary.

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

**21.29.040. Standards for sand, gravel or material sites.**

- A. These material site regulations are intended to Minimize aquifer disturbance, road damage, physical damage to adjacent properties, dust, and noise. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:
  - 1. [PROTECTS AGAINST] Minimizes the lowering of water sources serving other properties;
  - 2. [PROTECTS AGAINST] Minimizes physical damage to [OTHER] adjacent properties;



3. Minimizes off-site movement of dust;
4. Minimizes noise disturbance to other properties;
5. [MINIMIZES VISUAL IMPACTS] Provides for alternate post-mining land uses.

**21.29.050. Permit conditions.**

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

1. [*PARCEL*]Permit boundaries. [ALL BOUNDARIES OF THE SUBJECT PARCEL] The buffers and any easements or right-of-way abutting the proposed permit area shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter. Field verification and staking will require the services of a professional land surveyor. Stakes shall be in place [AT TIME OF APPLICATION] prior to issuance of the permit.

[2. BUFFER ZONE. A BUFFER ZONE SHALL BE MAINTAINED AROUND THE EXCAVATION PERIMETER OR PARCEL BOUNDARIES. WHERE AN EASEMENT EXISTS, A BUFFER SHALL NOT OVERLAP THE EASEMENT, UNLESS OTHERWISE CONDITIONED BY THE PLANNING DIRECTOR OR PLANNING COMMISSION.

A. THE BUFFER ZONE SHALL PROVIDE AND RETAIN A BASIC BUFFER OF:

I. 50 FEET OF UNDISTURBED NATURAL VEGETATION, OR

II. A MINIMUM TEN FOOT EARTHEN BERM WITH AT LEAST A 2:1 SLOPE, OR

III. A MINIMUM SIX-FOOT FENCE.

B. A 2:1 SLOPE SHALL BE MAINTAINED BETWEEN THE BUFFER ZONE AND EXCAVATION FLOOR ON ALL INACTIVE SITE WALLS. MATERIAL FROM THE AREA DESIGNATED FOR THE 2:1 SLOPE MAY BE REMOVED IF SUITABLE, STABILIZING MATERIAL IS REPLACED WITHIN 90 DAYS FROM THE TIME OF REMOVAL.

C. THE PLANNING COMMISSION OR PLANNING DIRECTOR SHALL DESIGNATE ONE OR A COMBINATION OF THE ABOVE AS IT DEEMS APPROPRIATE. THE VEGETATION AND FENCE SHALL BE OF SUFFICIENT HEIGHT AND DENSITY TO PROVIDE VISUAL AND NOISE SCREENING OF THE PROPOSED USE AS DEEMED

APPROPRIATE BY THE PLANNING COMMISSION OR PLANNING DIRECTOR.

- D. BUFFERS SHALL NOT CAUSE SURFACE WATER DIVERSION WHICH NEGATIVELY IMPACTS ADJACENT PROPERTIES OR WATER BODIES. SPECIFIC FINDINGS ARE REQUIRED TO ALTER THE BUFFER REQUIREMENTS OF KPB 21.29.050(A)(2)(A) IN ORDER TO MINIMIZE NEGATIVE IMPACTS FROM SURFACE WATER DIVERSION. FOR PURPOSES OF THIS SECTION, SURFACE WATER DIVERSION IS DEFINED AS EROSION, FLOODING, DEHYDRATION OR DRAINING, OR CHANNELING. NOT ALL SURFACE WATER DIVERSION RESULTS IN A NEGATIVE IMPACT.
- E. AT ITS DISCRETION, THE PLANNING COMMISSION MAY WAIVE BUFFER REQUIREMENTS WHERE THE TOPOGRAPHY OF THE PROPERTY OR THE PLACEMENT OF NATURAL BARRIERS MAKES SCREENING NOT FEASIBLE OR NOT NECESSARY. BUFFER REQUIREMENTS SHALL BE MADE IN CONSIDERATION OF AND IN ACCORDANCE WITH EXISTING USES OF ADJACENT PROPERTY AT THE TIME OF APPROVAL OF THE PERMIT. THERE IS NO REQUIREMENT TO BUFFER THE MATERIAL SITE FROM USES WHICH COMMENCE AFTER THE APPROVAL OF THE PERMIT.]

2. *Buffer Area.*

- a. A 2:1 slope shall be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 90 days from the time of removal.
- b. The buffer area may be reduced where the planning commission or planning director, as applicable, has approved an alternate buffer plan introduced by the applicant. The alternate buffer plan must consist of natural undisturbed vegetation, or a minimum ten foot berm, or a minimum six-foot fence or a combination thereof, consisting of only one option in a single geographical location; unless the permittee proposes another solution approved by the planning commission or planning director, as applicable, to meet this condition.
- c. The buffer requirements may be waived by the planning commission or planning director, as applicable, where the topography of the property or the placement of natural barriers makes screening not feasible or unnecessary.

- d. There is no requirement to buffer a material site from uses that commence after approval of the permit.
- 3. *Processing.* In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of adjacent properties at the time.
- 4. *Water source separation.*
  - a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.
  - b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation [FROM THE SEASONAL HIGH WATER TABLE BE MAINTAINED] an excavation distance a maximum of 15 feet below the seasonal high-water table must be maintained under these conditions:
    - 1. No dewatering is allowed.
    - 2. The edge of any water body must be 200 feet from any DEC septic or well.
    - 3. A spill response kit must be maintained onsite.
    - 4. Operations shall stay 2 foot above an aquifer-confining layer.
    - 5. A 200-foot separation from any water body and any stored hazardous material.
  - [C. ALL CLUPS SHALL BE ISSUED WITH A CONDITION WHICH REQUIRES THAT A TWO-FOOT VERTICAL SEPARATION FROM THE SEASONAL HIGH WATER TABLE BE MAINTAINED.]
  - c. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.

5. *Excavation in the water table.* Excavation in the water table greater than ~~[300]~~200 horizontal feet of a water source and 15 feet below water table may be permitted with the approval of the planning commission based on the following:
  - a. Certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.
  - b. The installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate, and water elevation.
  - c. Groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three-month intervals by a qualified independent civil engineer or professional hydrogeologist, for at least one year prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
  - d. Operations shall not breach an aquifer-confining layer.
6. *Waterbodies.*
  - a. An undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet [FROM] of excavation limits and the ordinary high water level of surface water bodies such as a lake, river, stream, [OR OTHER WATER BODY, INCLUDING] riparian wetlands [AND MAPPED FLOODPLAINS AS DEFINED IN KPB 21.06]. This regulation shall not apply to ponds less than one acre on private land, man-made waterbodies being constructed during the course of the materials extraction activities. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.
  - b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.
7. *Fuel storage.* Fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for

uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface. Double wall tanks are also acceptable.

8. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads as required by KPB 14.40.175 and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
9. *Subdivision.* Any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit. The planning director may issue a written exemption from the amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a material site and all original permit conditions can be met.
10. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
11. *Hours of operation.* [ROCK CRUSHING EQUIPMENT SHALL NOT BE OPERATED BETWEEN 10:00 P.M. AND 6:00 A.M.]
  - a. Processing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
  - b. The planning commission may grant exceptions to increase the hours of operation and processing based on surrounding land uses, topography, screening the material site from properties in the vicinity and conditions placed on the permit by the planning commission to mitigate the noise, dust and ~~visual impacts~~ caused by the material site.
12. *Reclamation.*
  - a. Reclamation shall be consistent with the reclamation plan approved by the planning commission or planning director as appropriate in accord with KPB 21.29.060.
  - b. [AS A CONDITION OF ISSUING THE PERMIT, THE APPLICANT SHALL SUBMIT A RECLAMATION PLAN AND POST A BOND TO COVER THE ANTICIPATED RECLAMATION COSTS IN AN AMOUNT TO BE DETERMINED BY THE PLANNING DIRECTOR. THIS BONDING REQUIREMENT SHALL NOT APPLY TO SAND, GRAVEL OR MATERIAL SITES FOR WHICH AN EXEMPTION FROM STATE BOND REQUIREMENTS FOR SMALL OPERATIONS IS APPLICABLE

PURSUANT TO AS 27.19.050.] The applicant shall operate the material site consistent with the approved reclamation plan and provide bonding pursuant to 21.29.060(B). This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.

13. *Other permits.* Permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC air and water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives. Any violation of these regulations or permits reported to or observed by borough personnel will be forwarded to the appropriate agency for enforcement.
14. [~~VOLUNTARY~~]Volunteered *permit conditions.* Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission for CLUPs or the planning director for counter permits. Such conditions must be consistent with the standards set forth in KPB 21.29.040(A). Planning commission approval of such conditions shall be contingent upon a finding that the conditions will be in the best interest of the borough and the surrounding property owners. [~~VOLUNTARY~~] Volunteered permit conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in [~~VOLUNTARY~~] volunteered permit conditions may be proposed [~~AT~~] by permit [~~RENEWAL OR AMENDMENT~~] modification.
15. *Signage.* For permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access, whichever is more visible. Sign dimensions shall be no more than 15" by 15" and must contain the following information: the phrase "Permitted Material Site" along with the permittee's business name and a contact phone number.

16. Appeal. No clearing of vegetation shall occur within the ~~50~~ 100-foot maximum buffer area from the permit boundary nor shall the permit be issued or operable until the deadline for the appeal, pursuant to KPB 21.20, has expired.
17. Reverse signal alarms. Reverse signal alarms, used at the material site on loaders, excavators, and other earthmoving equipment may be more technically advanced devices; such as, a multi-frequency “white noise” alarms rather than the common, single (high-pitch) tone alarms. At its discretion, the planning commission or planning director, as applicable, may waive this requirement or a portion of this requirement. The waiver of this requirement shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
19. Dust suppression. Dust suppression ~~may~~ shall be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on haul routes within property boundaries. Based on surrounding land uses the planning commission or planning director, as applicable, may waive or reduce the requirement for dust suppression on haul routes within property boundaries.
21. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8) must be approved by a licensed civil engineer or SWPPP certified individual.
22. Setback. Material site excavation areas shall be 250-feet from the property boundaries of any local option zoning district, existing public school ground, private school ground, college campus, child care facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation shall be included in the 250-foot setback. At the time of application.

#### **21.29.060. Reclamation plan.**

- A. All material site permit applications require an overall reclamation plan.
- B. The applicant may revegetate with a non-invasive plant species and reclaim all disturbed land [UPON EXHAUSTING THE MATERIAL ON-SITE, OR WITHIN A PRE-DETERMINED TIME PERIOD FOR LONG-TERM ACTIVITIES, SO AS TO LEAVE THE LAND IN A STABLE CONDITION. RECLAMATION MUST OCCUR FOR ALL EXHAUSTED AREAS OF THE SITE EXCEEDING FIVE ACRES BEFORE A FIVE-YEAR RENEWAL PERMIT IS ISSUED, UNLESS OTHERWISE REQUIRED BY THE PLANNING COMMISSION. IF THE MATERIAL SITE IS ONE ACRE OR LESS IN SIZE AND HAS BEEN GRANTED A CLUP DUE TO EXCAVATION IN THE WATER TABLE,



RECLAMATION MUST BE PERFORMED AS SPECIFIED BY THE PLANNING COMMISSION OR PLANNING DIRECTOR IN THE CONDITIONAL USE OR COUNTER PERMIT] within the time period approved with the reclamation plan so as to leave the land in a stable condition. Bonding shall be required at \$750.00 per acre for all acreage included in the current five-year reclamation plan. In the alternative, the planning director shall accept a civil engineer's estimate for determining the amount of bonding. If the applicant is bonded with the state, the borough's bonding requirement is waived. Compliance with reclamation plans shall be enforced under KPB 21.50.

C. The following measures must be considered in the [PREPARING] preparation, approval and [IMPLEMENTING] implementation of the reclamation plan, although not all will be applicable to every reclamation plan.

1. The area will be backfilled, graded and recontoured using strippings, overburden, and topsoil [TO A CONDITION THAT ALLOWS FOR THE REESTABLISHMENT OF RENEWABLE RESOURCES ON THE SITE WITHIN A REASONABLE PERIOD OF TIME. IT WILL BE STABILIZED TO A CONDITION THAT WILL ALLOW SUFFICIENT MOISTURE FOR REVEGETATION] so that it will be stabilized to a condition that will allow for the revegetation as required by KPB 21.29.060(B).
2. [SUFFICIENT QUANTITIES OF STOCKPILED OR IMPORTED TOPSOIL WILL BE SPREAD OVER THE RECLAIMED AREA TO A DEPTH OF FOUR INCHES TO PROMOTE NATURAL PLANT GROWTH THAT CAN REASONABLY BE EXPECTED TO REVEGETATE THE AREA WITHIN FIVE YEARS. THE APPLICANT MAY USE THE EXISTING NATURAL ORGANIC BLANKET REPRESENTATIVE OF THE PROJECT AREA IF THE SOIL IS FOUND TO HAVE AN ORGANIC CONTENT OF 5% OR MORE AND MEETS THE SPECIFICATION OF CLASS B TOPSOIL REQUIREMENTS AS SET BY ALASKA TEST METHOD (ATM) T-6.] The [MATERIAL] topsoil used for reclamation shall be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by a licensed engineer.
4. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation shall be removed from the site, buried or burned. Topsoil and other organics will be spread on the backfilled surface to inhibit erosion and promote natural revegetation.
5. [PEAT AND T] Topsoil mine operations shall ensure a minimum of [TWO] four inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).

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

[D. THE PLAN SHALL DESCRIBE THE TOTAL ACREAGE TO BE RECLAIMED EACH YEAR, A LIST OF EQUIPMENT (TYPE AND QUANTITY) TO BE USED IN RECLAMATION, AND A TIME SCHEDULE OF RECLAMATION MEASURES.]

**21.29.070. Permit extension and revocation.**

- A. Conditional land use permittees must submit a request in writing for permit extension every five years after the permit is issued. Requests for permit extension must be made at least 30 days prior to permit expiration. Counter permittees must submit any request for a 12-month extension at least 30 days prior to the expiration of the original 12-month permit period.
- B. A permit extension certificate for a CLUP may be granted by the planning director after 5 years, and after one year for a counter permit where no modification to operations or conditions are proposed.
- C. Permit extension may be denied if: (1) reclamation required by this chapter and the original permit has not been performed; (2) the permittee is otherwise in noncompliance with the original permit conditions; or (3) the permittee has had a permit violation in the last two years and has not fulfilled compliance requests.
- D. A modification application shall be processed pursuant to KP.B 21.29.030-050 with public notice given as provided by KP.B 21.25.060 when operators request modification of their permit conditions based on changes in operations set forth in the modification application.
- E. There shall be no fee for permit extensions approved by the planning director. The fee for a permit modification processed under KP.B 21.29.070(D) will be the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.
- F. Failure to submit a request for extension will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KP.B 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.
- G. Permits may be revoked pursuant to KP.B 21.50.

#### **21.29.080. Permit termination.**

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

#### **21.29.090. Permit modifications.**

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

#### **21.29.100. Recordation.**

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

#### **21.29.110. Violations.**

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

#### **21.29.120. Prior existing uses.**

- A. Material sites are not held to the standards and conditions of a CLUP if a prior existing use (PEU) determination was granted for the parcel in accordance with KPB 21.29.120(B). To qualify as a PEU, a parcel's use as a material site must have commenced or have been operated after May 21, 1986, and prior to May 21, 1996, provided that the subject use continues in the same location. In no event shall a prior existing use be expanded beyond the smaller of the lot, block, or tract lines as they existed on May 21, 1996. If a parcel is further subdivided after May 21, 1996, the pre-existing use may not be expanded to any lot, tract, or parcel where extraction had not occurred before or on February 16, 1999. If a parcel is subdivided where extraction has already occurred, the prior existing use is considered

abandoned, and a CLUP must be obtained for each parcel intended for further material site operations. The parcel owner may overcome this presumption of abandonment by showing that the subdivision is not inconsistent with material site operation. If a parcel subject to a prior existing use is conveyed, the prior existing use survives the conveyance.

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

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

- 1. The planning department may request proof of continued compliance with AS 27.19.030 – 050 on an annual basis.
- 2. Pursuant to KPB 21.29.110 the enforcement process and remedies set forth in KPB 21.50 shall govern if the proof that the statutory requirements contained in AS 27.19.030-050 is not provided to the planning department.

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

**21.50.055. Fines.**

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

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

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

<b>CODE CHAPTER &amp; SECTION</b>	<b>VIOLATION DESCRIPTION</b>	<b>DAILY FINE</b>
KPB 21.44.130(C)(D)	Violation of Home Occupation Standards and Conditions/Local Option Zoning	\$300.00
KPB 21.44.130(F)	Disallowed Home Occupation/Local Option Zoning	\$300.00
KPB 21.44.135	Failure to file development notice	\$300.00
KPB 21.44.160(A)(B)	Prohibited use	\$300.00
KPB 21.44.160(C)	Violation of Development Standards/Single Family Zoning/Local Option Zoning	\$300.00
KPB 21.44.165(A)(B)	Prohibited use	\$300.00
KPB 21.44.165(C)	Violation of Development Standards/Small Lot Residential Zoning/Local Option Zoning	\$300.00
KPB 21.44.170(A)(B)	Prohibited use	\$300.00
KPB 21.44.170(C)	Violation of Development Standards/Rural Residential District/Local Option Zoning	\$300.00
KPB 21.44.175(B)(C)	Prohibited Use	\$300.00
KPB 21.44.175(D)	Violation of Development Standards/Residential Waterfront	\$300.00
KPB 21.44.180(A)(B)	Prohibited Use	\$300.00
KPB 21.44.180(C)	Violation of Development Standards/Multi-Family Residential District/Local Option Zoning	\$300.00
KPB 21.44.190(A)(B)	Prohibited Use	\$300.00
KPB 21.44.190(C)	Violation of Development Standards/Industrial District/Local Option Zoning	\$300.00



CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
KPB 21.46.030(b)	Failure to maintain bear-resistant garbage cans/Local option zone/Birch and Grove Ridge subdivisions Rural Residential District	\$300.00
KPB 21.50.100(F)	Removal of posted enforcement notice	\$300.00
KPB 21.50.100(G)	Violation of enforcement notice	\$1,000.00
KPB 21.50.130(I)	Violation of an enforcement order	\$1,000.00

**SECTION 4.** That this ordinance shall become effective upon its enactment.

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

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Brent Johnson, Assembly President

ATTEST:

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Johni Blankenship, MMC, Borough Clerk

02/01/22 Vote on motion to table:

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

No: None

Absent: None

Introduced by:	Mayor
Date:	08/23/22
Hearing:	09/06/22
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-38**

**AN ORDINANCE AUTHORIZING THE RELEASE OF A PORTION OF A  
CONSERVATION EASEMENT DEED RESTRICTION ON A PARCEL OF  
LAND LOCATED IN COOPER LANDING AND TO ACQUIRE AND CLASSIFY  
A 30-FOOT-WIDE TRACT OF LAND**

- WHEREAS,** Tract B Quartz Creek Subdivision, according to Plat No. 94-1, Seward Recording District, was purchased by Three Bears Alaska, Inc. (“Three Bears”), who is planning development of the parcel; and
- WHEREAS,** the State of Alaska, Department of Transportation & Public Facilities (DOT&PF) is working to develop and implement plans for the Sterling Highway MP 45-60 Project, which includes reconfiguring the Quartz Creek Road intersection and rearranging direct access from the new highway and its transitions; and
- WHEREAS,** the Kenai Peninsula Borough (KPB) owns Tracts A & C of Quartz Creek Subdivision and is working with DOT&PF and Three Bears to plan a frontage road serving Quartz Creek Subdivision; and
- WHEREAS,** Tract B Quartz Creek Subdivision, owned by Three Bears, was originally deeded from KPB in accordance with Ordinance 1991-20; and
- WHEREAS,** at the time of the original conveyance, the deed was subject to the following Conservation Easement Deed Restriction: “... pursuant to Ordinance 1991-20, a 50-foot conservation easement around the perimeter of the parcel wherein no live, naturally existing vegetation over 3” in diameter shall be removed except for a 50-foot wide entry and a 50-foot wide exit”; and
- WHEREAS,** the conservation easement was an element of the original plat, which has been approved to be vacated in part, subject to actions contained in this ordinance; and
- WHEREAS,** the proposed plat, Quartz Creek Subdivision Outfitters Way Replat, would dedicate a frontage road with a 30-foot setback from the DOT right-of-way with said features occupying the same space as the conservation easement on the northern perimeter of Tract B, and into Three Bears unencumbered property; and

**WHEREAS,** the frontage road setback creates a 30-foot tract of land designed as a greenspace to maintain vegetation and community gateway aesthetics, which is consistent with the purpose of the conservation easements; and

**WHEREAS,** the approved plat would vacate the conservation easements on Tract B along the west and south perimeter, but maintain the conservation easement along the east perimeter which runs along Dena'ina Creek, an anadromous stream; and

**WHEREAS,** the 30-foot tract of land created out of Tract B is proposed to be conveyed from Three Bears back to KPB which, along with the benefits of the frontage road design, accounts for the value of the conservation easements being released; and

**WHEREAS,** classifying the 30-foot tracts of land created by the Quartz Creek Subdivision Outfitters Way Replat as "government" would hold the land for community gateway greenspace uses that are beneficial to the public, providing for consistent management decisions under public processes; and

**WHEREAS,** public notice has been published as to the modification of a deed restriction per KPB 17.10.130(F)(2), and as to classification pursuant to KPB 17.10.080; and

**WHEREAS,** the Cooper Landing Advisory Planning Commission at its regularly scheduled meeting of August 3, 2022, recommended approval by unanimous consent; and

**WHEREAS,** the KPB Planning Commission at its regularly scheduled meeting of August 22, 2022, recommended approval by unanimous consent;

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

**SECTION 1.** That pursuant to KPB 17.10.130(F)(4), the mayor is hereby authorized to release the conservation easement deed restriction on the north, west and south perimeter sides of Tract B Quartz Creek Subdivision, according to the official plat thereof, filed under Plat Number 94-1, Records of the Seward Recording District, Third Judicial District, State of Alaska, as created in that Quitclaim Deed recorded May 13, 1998, as Book 90, Page 831, Seward Recording District, with such release of interests conforming to Quartz Creek Subdivision Outfitters Way Replat, based on the following Findings of Fact:

- a. The purpose of the conservation easement deed restriction on the north, west and south perimeter sides is replaced by the 30-foot-wide tract of land being conveyed back to KPB.

- b. The frontage road proposed by DOT&PF competes for space with the conservation easement, and setting the frontage back 30', with KPB holding the land interests of that tract, preserves the aesthetic intent of the easement and provides for the continuation of planning and management of that corridor under public processes.
- c. The frontage road proposed by DOT&PF addresses traffic safety concerns and provides for public traffic to efficiently navigate on and off the local roads and to serve the property, residential, and business interests in the area.
- d. The value of the 30-foot-wide tract of land and the benefits of the cooperative frontage road design accounts for the value of the conservation easement being released, going back to the terms of the original conveyance of Tract B.
- e. Public notice of the proposed actions was delivered and published in accordance with KPB 17.10.130(F)(2).

**SECTION 2.** That pursuant to KPB 17.10.040, the mayor is hereby authorized to acquire from Three Bears a 30-foot-wide tract along the north boundary of Tract B, Quartz Creek Subdivision, also known as Tract B2 Quartz Creek Subdivision Outfitters Way Replat.

**SECTION 3.** That the terms of the acquisition shall be an equal exchange for the conservation easement deed restriction release as described in Section 1 and that Three Bears shall convey the Tract to KPB.

**SECTION 4.** That the purpose of the acquisition is for community gateway greenspace, to facilitate implementation of a frontage road serving KPB-owned tracts of land, and to cooperate with the DOT&PF in making traffic improvement and safety upgrades along the Sterling Highway corridor.

**SECTION 5.** That the 30-foot-wide tracts of land located between the Outfitters Way frontage road and the Sterling Highway right-of-way described as Tracts A2, B2, and C2 Quartz Creek Subdivision Outfitters Way Replat are hereby classified as "government".

**SECTION 6.** The mayor is authorized to sign a release of deed restriction, respective to Tract B Quartz Creek Subdivision, and any other documents necessary to effectuate the intents and purposes of this ordinance.

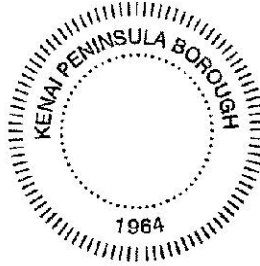
**SECTION 7.** That this ordinance shall become effective upon recordation of the Quartz Creek Subdivision Outfitters Way Replat in the Seward Recording District.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY OF SEPTEMBER, 2022.**

Brent Johnson  
Brent Johnson, Assembly President

ATTEST:

John Blankenship  
John Blankenship, MMC, Borough Clerk



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



# Kenai Peninsula Borough


## Planning Department – Land Management Division

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### MEMORANDUM

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

**THRU:** Charlie Pierce, Borough Mayor   
Robert Ruffner, Planning Director 

**FROM:** Marcus A Mueller, Land Management Officer 

**DATE:** August 11, 2022

**RE:** Ordinance 2022-38, Authorizing the Release of a Portion of a Conservation Easement Deed Restriction on a Parcel of Land Located in Cooper Landing and to Acquire and Classify a 30-Foot-Wide Tract of Land (Mayor)

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The KPB Planning Department and Three Bears Alaska, Inc. (Three Bears), as owners of Tracts A, B, & C Quartz Creek Subdivision, are cooperating with Alaska DOT&PF in the design of a frontage road that in the future would extend from Quartz Creek Road to the KPB Solid Waste Transfer Facility with an intersection opposite Russian Gap Road to address highway safety and traffic efficiency. This location is also positioned as a gateway to the Cooper Landing community, wherein there is an importance to aesthetic greenspace.

A re-platting of these three tracts is being proposed as Quartz Creek Subdivision Outfitters Way Replat, KPB File 2022-060, which has received tentative platting approval, subject to actions contained in this proposed ordinance. The plat would dedicate right-of-way for a frontage with a 30-foot offset from the Sterling Highway ROW. The strips of land between the frontage road and the Sterling Highway is proposed to be managed by KPB as greenspace, which would substitute for a conservation easement that was previously instituted on Tract B and Tract C. The 30-foot-wide tract coming out of Tract B would be conveyed by Three Bears to KPB. The KPB's Land Management Division is proposing a "Government" land classification of the 30-foot-wide tract plus those 30-foot-wide tracts coming out of KPB-owned Tracts A and C, to direct the management of the land between the frontage road and the Sterling Highway right-of-way to community gateway greenspace.

The ordinance releases the conservation easement deed restriction on the North, West and South sides of the Tract B parcel. The partial release will keep the

August 9, 2022

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Re: O2022-38

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conservation easement in effect on the East side, which runs along Dena'ina Creek, of Tract B. The ordinance additionally authorizes the KPB Mayor to acquire the 30-foot-wide tract from Three Bears, described on the proposed replat as Tract B2, as an equal exchange for the removal of the conservation easement just described. Additionally, the ordinance classifies the entirety of the 30-foot strip created in the replat as Tracts A2, B2, & C2 as "Government". The ordinance, if enacted, would be effective upon recording of the Quartz Creek Subdivision Outfitters Way Replat.

The proposed set of actions would allow DOT&PF to incorporate the frontage road system into its traffic safety designs and to extend the frontage road development to its project limits at Persistent Way on the East side of Tract C. These actions would also clear title important for Three Bears' project. In doing so, Three Bears would be giving up use of the front 100-feet of Tract B to the 30-foot greenspace tract, the 60-foot frontage road dedication and a 10-foot utility easement, in exchange for the release of the 50-foot conservation easement on the back lot and 50-foot conservation easement on the Persistent Way side.

Your consideration of the ordinance is appreciated.



Kenai Peninsula Borough  
Office of the Borough Clerk

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**MEMORANDUM**

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

**THRU:** Johni Blankenship, Borough Clerk (JB)

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

**DATE:** August 23, 2022

**RE:** Ordinance 2022-38: Authorizing the Release of a Portion of a Conservation Easement Deed Restriction on a Parcel of Land Located in Cooper Landing and to Acquire and Classify a 30-Foot-Wide Tract of Land (Mayor)

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

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

**"WHEREAS,** the Cooper Landing Advisory Planning Commission at its regularly scheduled meeting of August 3, 2022, recommended approval by unanimous consent; and

**WHEREAS,** the KPB Planning Commission at its regularly scheduled meeting of August 22, 2022, recommended approval by unanimous consent;"

Thank you.

**From:** Cooper Landing Advisory Planning Commission  
**To:** [jaeger06@hotmail.com](mailto:jaeger06@hotmail.com); [Tymick, Jonathan J \(DOT\)](mailto:Tymick.Jonathan.J@DOT); [Cindy Ecklund](mailto:Cindy.Ecklund); [Baski, Sean M \(DOT\)](mailto:Baski.Sea.M@DOT); [Mueller, Marcus](mailto:Mueller.Marcus); [ygalbraith@gmail.com](mailto:ygalbraith@gmail.com); [Planning Dept.](mailto:Planning.Dept.); [jette.cadieux@gmail.com](mailto:jette.cadieux@gmail.com); [Laura Johnson](mailto:Laura.Johnson); [Virginia Morgan](mailto:Virginia.Morgan); [David Story](mailto:David.Story); [brandonandheather@live.com](mailto:brandonandheather@live.com); [Kathy Recken](mailto:Kathy.Recken); [Fletcher, Sandra](mailto:Fletcher.Sandra); [Carver, Nancy](mailto:Carver.Nancy)  
**Subject:** <EXTERNAL-SENDER>Re: 2022 08 03 CLAPC Unapproved Minutes  
**Date:** Thursday, August 4, 2022 9:24:31 AM  
**Attachments:** [1. Chugach Electric Daves Creek Substation MAP 7.13.2022.pdf](#)

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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.

On Thu, Aug 4, 2022 at 9:23 AM Cooper Landing Advisory Planning Commission  
<[cooperlandingapc@gmail.com](mailto:cooperlandingapc@gmail.com)> wrote:

Commissioners:

Attached are the Unapproved Minutes from our August 3, 2022 Regular Meeting. The support documents include all but the document titled *1. Chugach Electric Daves Creek Substation MAP 7.13.2022.pdf*. Due to size limitations it will be sent as a second email.

Also attached are the approved minutes from June 8, 2022

Please note that the CLAPC voted by roll call as follows:

- **Ordinance 2022-XX An Ordinance Authorizing the Release of a Commercial Deed Restriction on a Parcel of Land Located in Cooper Landing Originally Conveyed by the Kenai Peninsula Borough. "Cozy Bear" property.**
  - Recommend the removal of the deed restriction on the land.
  - All approve.
- **Ordinance 2022-XX An Ordinance Authorizing the Release of a Portion of a Conservation Easement Deed Restriction on a Parcel of Land Located in Cooper Landing and to Acquire a 30-Foot-Wide tract of Land and Classify Three, 30-Foot-Wide Tracts of Land as Government. "Three Bears" property.**
  - Recommend supporting the ordinance if:
    1. The 30' greenspace is maintained in its entirety
    2. Design of final plat includes a separated pathway within the right of way corridor along its length that connects to the Phase 1B separated pathway and is not within the maintained greenspace.
  - All approve.
- **Conditional Use Permit to Chugach Electric Association to use rip rap and create a new alignment of Quartz Creek near the Dave's Creek Substation to keep water away from the substation.**
  - Recommend approval of the permit application as proposed.
  - All approve.

Please let me know if you have questions or need more information.

Cheers,  
David

**COOPER LANDING ADVISORY PLANNING COMMISSION  
REGULAR MEETING  
LOCATION: ZOOM TELECONFERENCE OR  
COOPER LANDING COMMUNITY HALL  
WEDNESDAY, AUGUST 3, 2022  
6:00 PM  
UNAPPROVED MINUTES**

1. CALL TO ORDER – 6:00 p.m.
2. ROLL CALL – J. Cadieux, C. Degernes, H. Harrison, K. Recken, D. Story present. Laura Johnson and Yvette Galbraith excused.
  - a. Members of Public present: Ray Wilkes, Todd Donahue, Candy Fitzpatrick
  - b. Agency Representatives: Sean Baski ADOT&PF, Cynthia Lowe HDR, Nancy Carver, KPB, Alice Rademacher, HDR, Marcus Mueller, KPB, Alvin Talbert, ADOT&PF
3. APPROVAL OF AGENDA – K. Recken moves to approve as written. C. Degernes seconds. All approve by roll call vote.
4. APPROVAL OF MINUTES for June 08, 2022 – H. Harrison moves to approve as written. K. Recken seconds. All approve by roll call vote.
5. CORRESPONDENCE – none
6. PUBLIC COMMENT/PRESENTATION WITHOUT PREVIOUS NOTICE – none.
7. REPORT FROM BOROUGH
  - a. DOT&PF Sterling Hwy MP 45-60 Project report and questions/answers. Sean Baski, PE, Project Manager and Design Manager, AKDOT&PF.
    - i. Finalizing negotiations for Stage 3 and 4 Early Work Package – the embankment for the east and west side of the bridge.
    - ii. Pioneer roads were largely done on the east side and are working on finishing them on the west side in the next couple weeks.
    - iii. Bridge girder selection is complete. The design of the bridge itself will continue. 6.5 million tons of steel or about \$30-40 million dollars in raw steel cost so far.
    - iv. Archeological work is ongoing. Expected completion next year. Monitoring will be a part of project construction throughout.
    - v. Q: K. Recken asked about the archeological information and whether it will eventually be shared with the public.

1. A: S. Baski said that as part of the agreement the project has contracted with a group that will transcribe that information for public use but that will not necessarily include the locations of findings etc.
- vi. Stage 5 – western intersection – is aiming to be at 75% design late this year or early next year.
- vii. Stage 1A was anticipated to be completed this year but some of the archeological findings may stretch that into next year.
- viii. Q: Ray Wilkes asked whether the west end will be at a point where it is paved before winter.
  1. A: S. Baski said that is expected to be the case but he would follow up with the group if it is not anticipated to be so.
- b. Nancy Carver, KPB Report:
  - i. Noted that there are three seats on the CLAPC that will be up at the end of the month. One member of the group has already submitted a letter to continue on the commission.
  - ii. The KPB is looking at adjusting the APC structure and whether they might be community councils instead. She suggested Cooper Landing residents and APC members research the benefits, detriments to this model in anticipation of that inquiry from the KPB.

#### 8. OLD BUSINESS - none

#### 9. NEW BUSINESS

1. Ordinance 2022-XX An Ordinance Authorizing the Release of a Commercial Deed Restriction on a Parcel of Land Located in Cooper Landing Originally Conveyed by the Kenai Peninsula Borough. “Cozy Bear” property.
  1. M. Mueller said, in general, that the KPB will have restrictions and how to modify them on the parcels that are given out. This particular deed during the land sale had the general practice at the time that included land restrictions. These kinds of restrictions are no longer placed on land sales that are made today. This is a proposal to remove the commercial deed restriction that was placed at the time of the original land sale. The reason for the request is from R. Wilkes and S. Kuzinski because of their pending sale which is running into issue from the mortgage provider due to the classification.
    1. K. Recken said that it is her understanding that commercial land has restrictions on it while residential does not.

1. M. Mueller said this is not zoning. It would go from a commercial deed restriction to the deed not having a deed restriction at all.
2. K. Recken asked what restrictions that commercial restrictions have.
  1. M. Mueller said that it can only be used for commercial purposes.
2. J. Cadieux stated that the community still has an interest in how the land might be utilized, for example, the community may not want an industrial site set up in that location but, of course, once the deed restriction is removed it is entirely up to the land owner.
3. R. Wilkes said that when the land was sold by the borough there was no land use zoning restrictions and it is still the case so the deed restriction is irrelevant anyway. He said that he ran into issue during the financing for the land and that the title company said that they had run into this issue a fair bit.
4. J. Cadieux asked if R. Wilkes was familiar with the Cooper Landing Land Use Plan.
  1. He said yes. He said that the place was built as a single-family residence though it has been used off and on as a B&B and that a number of documents state the highest and best use of the land is as a single-family residence.
5. H. Harrison moves to recommend the removal of the deed restriction on the land. D. Story seconds. All approve by roll call vote.
2. Ordinance 2022-XX An Ordinance Authorizing the Release of a Portion of a Conservation Easement Deed Restriction on a Parcel of Land Located in Cooper Landing and to Acquire a 30-Foot-Wide tract of Land and Classify Three, 30-Foot-Wide Tracts of Land as Government. "Three Bears" property.
  1. M. Mueller reported for KPB
  2. Replating the frontage of A,B, and C tracts. Two borough properties and one private: Tract A is the Transfer Station, Tract C is where QAP is staging for the MP 45-60 Project and is slated to be used as commercial property according to the local land management plan, and Tract B is Three Bears' property.
  3. This facilitates a frontage road from Quartz Creek Rd. to the Solid Waste Transfer Site.
  4. The frontage road concept was brought up by DOT to address safety concerns and reduce the number of highway turnouts on the new alignment and the surrounding areas.
  5. Three Bears has interest because the frontage road occupies the some of the same space as a conservation easement along this area.

6. This ordinance deals with parts of that starting with Tract B it would authorize the release of the conservation easement as it is written and is framed as a modification of a deed restriction. The three sides other than the one facing Dena'ina Creek would be released from the conservation easements that exist on that deed.
7. The 30' strip of land on the new alignment side would be conveyed from Three Bears to KPB and the cost of it would be, at least in part, considered the cost of the release of the deed restriction for the conservation easements.
8. To apply government designation to the newly created tracts A2, B2, C2 and would be managed in the public interest.
9. This ordinance would take effect when the new plat is recorded.
10. M. Mueller said that when the KPB conveyed Tract B originally the value of the conservation easement was not included. In this ordinance the value of the conservation easement and frontage road language is meant to help explain the process of making all parties whole
11. Q: K. Recken asked what "management for public benefit" means.
  1. A: M. Mueller said that the way he sees that rolling out is the Cooper Landing planning processes – functions of APC etc. – would mean the management of that would be deliberative. The immediate management of it would be no different than the current – managing the vegetation as is there would be some spruce bark beetle mitigations etc. but that this might be where a community sign might be placed.
  2. Q: K. Recken asked about whether we were losing the conservation easement on the road side.
    1. A: M. Mueller said that the management of that strip is to maintain community interests for green space
    2. The ordinance states: "Whereas classifying the 30-foot tracts of land created by the Quartz Creek Subdivision Outfitters Way Replat as "government" would hold the land for community gateway greenspace uses that are beneficial to the public, providing for consistent management decisions under public processes."
  3. J. Cadieux stated there is no doubt that there is fear in the community of losing this greenspace even when it comes time to put a walking biking path etc.
12. R. Wilkes said that just from the sounds of it there is a 50' conservation easement that exists right now. If they do away with that easement and put a frontage road there it would end up with no trees in between the two roads.
  1. M. Mueller said that the clearing of Tract C has currently maintained tree cover 75' from the edge of the right-of-way

so there would still be 30' of greenspace with the proposed changes.

13. S. Baski shared his screen to show some of the designs of the proposed layout of the frontage road and the edges of its ditches and fill slopes.
14. Q: J. Cadieux asked how much of the new alignment ROW would be treed.
  1. A: S. Baski said that there is no guarantee that there will be any trees within that right-of-way other than what is explicitly noted in the project requirements.
15. Q: D. Story asked about the active transportation component of the frontage road design. People will be attempting to walk and bike in this travel corridor whether we plan for them or not.
  1. A: S Baski indicated no specific accommodation has been included in preliminary design.
16. Q: J. Cadieux seconded with a question about the KPB's intention to provide for safe active transportation. Just because the mistake has been made to not account for active transportation on frontage roads elsewhere doesn't mean we need to repeat that mistake. 60' has provided for these shared functions in other places and should probably do so in this one.
  1. Our community has already made it clear that we need to accommodate for safe active transportation in this corridor. If we recommend for this ordinance tonight we are not precluding that this wouldn't be included in the design but it cannot be at the expense of the greenspace because it is very clear that there is no guarantee of any treed buffer on the DOT ROW.
  2. Q: Can we make our recommendation include guaranteed integrity of the greenspace be maintained and accommodation for a separated pathway that would accommodate non-vehicular traffic?
  3. A: S. Baski said that when dealing with 60' of space it appears there is a lot of room there but actually there isn't. Ultimately compromises would have to be made if an active transportation facility were included. In urban areas it includes curbs and gutters to gain additional space but in the rural context it becomes less desirable and often just a paved shoulder is considered adequate.
  4. As of right now there has not been an official ask from the community to include those facilities.
17. Q: J. Cadieux asked whether the design speed would play into the width required for the shoulders.
  1. A: S Baski said not really.
18. Q: M. Mueller asked whether expanding the KPB Tract C ROW to 70' would make the concept more viable?



1. A: S Baski acknowledged it may.
2. K Recken and II Harrison reiterated that the proposed extra 10' could not be taken from the 30' greenspace.
19. D. Story moved to recommend supporting the ordinance if
  1. The 30' greenspace is maintained in its entirety
  2. Design of final plat includes a separated pathway within the right of way corridor along its length that connects to the Phase 1B separated pathway and is not within the maintained greenspace.
  3. II. Harrison seconds. All approve by roll call vote.
3. Conditional Use Permit to Chugach Electric Association to use rip rap and create a new alignment of Quartz Creek near the Dave's Creek Substation to keep water away from the substation.
  1. Cynthia Lowe is the project manager with IIDR.
    1. She said they are trying to protect the upstream edges of the substation with rip rap. It will extend out about 100' to encourage Quartz Creek to flow back into its main channel.
    2. The intent is a one-time fix that would address future climatic or flood occurrences.
    3. If sinkholes keep developing as they have done in the last couple weeks they may need to add more rock to the front edge or go deeper with the rock and fabric. They have already re-designed to accommodate the sink holes and may need to again. The extension of rip rap in the current drawing before the APC has already been modified to sweep back closer to the CEA line and not as near the main Quartz Creek branch.
  2. C. Degernes moves to recommend approval of the permit application as proposed. K. Recken seconds.
    1. Q: K. Recken asked about the design plans should the sinkholes grow.
    2. A: C. Lowe explained the holes have already grown and the plans now include geotextile below almost 6-foot depth of class three rip rap to protect the station.
    3. All approve by roll call vote.

10. PLAT REVIEW - none

11. INFORMATION and ANNOUNCEMENTS - none

12. COMMISSIONER'S COMMENTS - none

13. ADJOURNMENT – C. Degernes moves to adjourn, K. Recken seconds. All approve. 7:56 p.m.

For more information or to submit comments please contact:

David Story, Secretary Treasurer or Janette Cadieux, Chair, P.O. Box 694, Cooper Landing, 99572 [CooperLandingAPC@gmail.com](mailto:CooperLandingAPC@gmail.com)

## Turner, Michele

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**From:** Shirnberg, Ann  
**Sent:** Tuesday, August 23, 2022 7:49 AM  
**To:** Blankenship, Johni; Turner, Michele  
**Subject:** August 22nd PC Recommendations to the Assembly

Good Morning Johni,

Last night at their regularly scheduled planning commission meeting of August 22, 2022 the commission unanimously (12-Yes, 0-No, 2-Vacant) recommend that the Assembly adopt the following ordinance:

- Ordinance 2022-38: Authorizing the release of a portion of a conservation easement deed restriction on a parcel of land located in Cooper Landing and to acquire a 30-foot-wide tract of land and classify three 30-foot-wide tracts of land as government.

Thank You,

Ann Shirnberg  
Administrative Assistant  
Planning Department  
(907) 714-2215

KENAI PENINSULA BOROUGH  
144 North Binkley Street  
Soldotna, Alaska 99669



PUBLIC RECORDS LAW DISCLOSURE: This email and responses to this email may be subject to provisions of Alaska Statutes and may be made available to public upon request.

## PARTIAL RELEASE OF CONSERVATION EASEMENT DEED RESTRICTION

**WHEREAS**, the Kenai Peninsula Borough conveyed real property to Pixie Smith by quitclaim deed recorded on May 13, 1998, as **Book 90, Page 831 in the Seward Recording District**, pursuant to KPB Ordinance 91-20 which contained a conservation easement deed restriction.

**WHEREAS**, the real property is described on said deed as Tract B, Quartz Creek Subdivision, according to Plat No. 94-11, on file in the Seward Recording District, Third Judicial District, State of Alaska.

**WHEREAS**, Three Bears Alaska, Inc., is the successor in interest of the real property.

**WHEREAS**, on \_\_\_\_\_, 2022, the Kenai Peninsula Borough Assembly enacted Ordinance 2022-XX authorizing the partial release of said deed restriction on three of the four perimeter sides of that original parcel.

**NOW, THEREFORE**, the **GRANTOR, THE KENAI PENINSULA BOROUGH**, an Alaska municipal corporation, whose address is 144 North Binkley Street, Soldotna, Alaska 99669, for the sum of one dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, and pursuant to Assembly Ordinance 2022-XX, enacted \_\_\_\_\_, 2022, partially releases forever unto the successor in interest and **GRANTEE, Three Bears Alaska, Inc.**, an Alaska corporation, whose address is 445 N. Pittman Road, Suite B, Wasilla, AK 99623, its successors and assigns, the following restriction created in that Statutory Warranty deed recorded at Book 90, Page 831 in the Seward Recording District:

*“pursuant to Ordinance 91-20, a 50-foot conservation easement around the perimeter of the parcel wherein no live, naturally existing vegetation over 3” in diameter shall be removed except for a 50-foot wide entry and a 50-foot wide exit”*

As to the parts of along the North, West and South perimeter sides, such that the Conservation Easement deed restriction along the East side perimeter remains in effect, in conformance with Quartz Creek Subdivision Outfitters Way Replat.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2022.

KENAI PENINSULA BOROUGH:

\_\_\_\_\_  
Charlie Pierce, Mayor

ATTEST:

APPROVED AS TO FORM AND  
SUFFICIENCY

\_\_\_\_\_  
Johni Blankenship  
Borough Clerk

\_\_\_\_\_  
A. Walker Steinhage  
Deputy Borough Attorney

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA                    )  
  )ss.  
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 on behalf of the corporation.

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

Record in the Seward Recording District

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

**Public Notice of Proposed Partial Release of a Deed Restriction  
And  
Public Notice of Land Classification in Cooper Landing, AK**

Pursuant to Kenai Peninsula Borough Code of Ordinances, Chapter 17.10.130(f), the Kenai Peninsula Borough is considering partial release of a Conservation Easement deed restriction on a parcel of land owned by Three Bears Alaska, Inc described as Tract B, Quartz Creek Subdivision.

Pursuant to Kenai Peninsula Borough Code of Ordinances, Chapter 17.10.080, the Kenai Peninsula Borough is proposing to classify a 30-foot wide strip of land along the Sterling Highway described in the preliminary Quartz Creek Subdivision Outfitters Way Replat as Tracts A2, B2, & C2.

The Borough encourages you to review the proposed ordinance and submit written comments. Written comments must be received no later than close of business August 10, 2022, to be included in the Planning Commission packet for its public hearing or 1pm August 19, 2022 for laydown. Written comments may be sent to the following address: Kenai Peninsula Borough, Land Management Division 144 N. Binkley Street, Soldotna, AK 99669-7599 or by email to [lmweb@kpb.us](mailto:lmweb@kpb.us)

**Description of Property for Deed Modification: Tract B, Quartz Creek Subdivision, Plat 94-11 SRD, Tax Parcel ID 119-124-18**

Tract B was deeded from the Kenai Peninsula Borough in 1992, subject to the following Conservation Easement Deed Restriction:

*"pursuant to Ordinance 91-20, a 50-foot conservation around the perimeter of the parcel wherein no live, naturally existing vegetation over 3" in diameter shall be removed except for a 50-foot wide entry and a 50-foot wide exit."*

**Description of Property for "Government" Classification: Tracts A2, B2, & C2, Quartz Creek Subdivision Outfitters Way Replat shown by preliminary plat KPB File 2022-060**

Proposed Tracts A2, B2, and C2 consist of a 30-foot-wide strip of land between the Sterling Highway and a proposed frontage road paralleling the highway to the KPB Solid Waste Transfer Facility. The frontage road would provide for safety design improvements along the highway. The strip of land is proposed to be held by the Kenai Peninsula Borough for community gateway greenspace under a "government" classification.

The proposed deed modification action by would remove the Conservation Easement Deed Restriction affecting 3 -sides of Tract B, the North, West and South sides in substitution for the creation of the 30' wide greenspace strip and frontage road dedication. The conservation easement along the east side of Tract B (along Dena'ina Creek) would remain in effect.

The public is invited to give testimony at the following meetings. Public meetings will be held as shown unless otherwise advertised.

Cooper Landing Advisory Planning Commission Public Hearing: August 3, 2022, 6:00 p.m. at the Cooper Landing Community Hall or Via Zoom <https://us06web.zoom.us/j/2045581076>

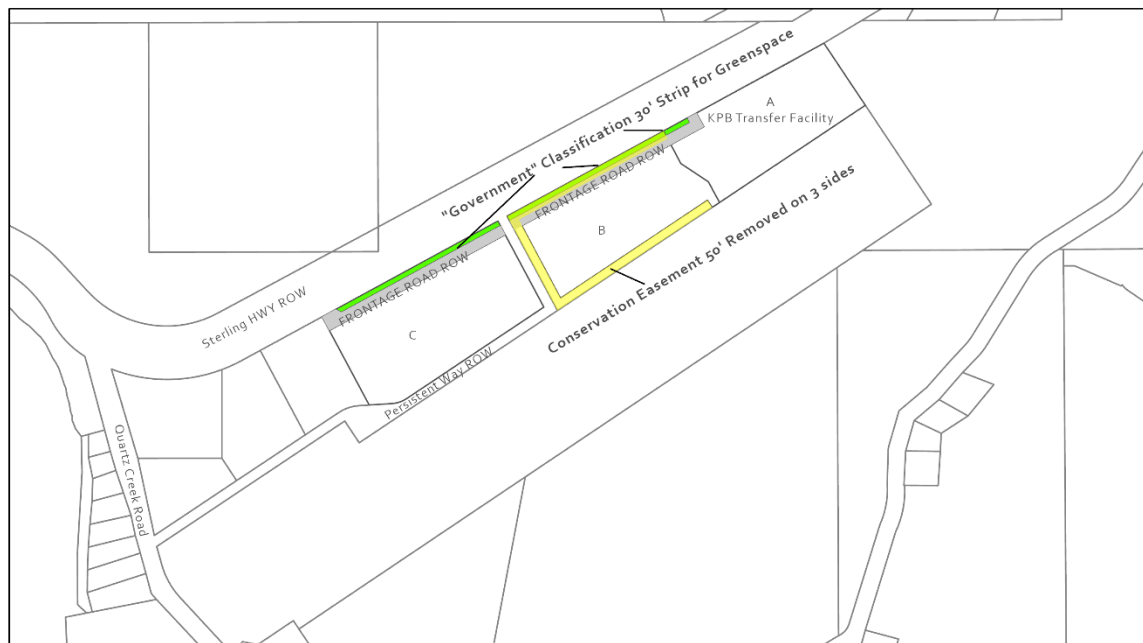
Kenai Peninsula Borough Planning Commission Public Hearing: August 22, 2022, 7:30 p.m. at the KPB Administration Building, 144 N. Binkley Street, Soldotna, AK 99669 or via Zoom <https://kpb.legistar.com/Calendar.aspx>

Kenai Peninsula Borough Assembly Meeting: August 23, 2022, 6:00 p.m. at the KPB Administration Building, 144 N. Binkley Street, Soldotna, AK 99669. <https://kpb.legistar.com/Calendar.aspx>

**Additional Information:** For further information contact Marcus Mueller, Land Management Division at 907-714-2205, or toll free within the Kenai Peninsula Borough 1-800-478-4441, ext. 2205.

The Kenai Peninsula Borough reserves the right to waive technical defects in this publication.

Conservation Easement to Be Removed  
&  
30-Foot Strip to be Classified "Government"



TRACTS A, B, C Quartz Creek Subdivision  
Sketch of Preliminary Plat Proposed as  
Quartz Creek Subdivision Outfitters Way Replat

DIAGRAM PREPARED BY:  
M. MUELLER 7/19/22



# Quartz Creek to Solid Waste Transfer Frontage Road Platting Overview



TRACTS A, B, C Quartz Creek Subdivision  
Sketch of Preliminary Plat Proposed as  
Quartz Creek Subdivision Outfitters Way Replat

DIAGRAM PREPARED BY:  
M. MUELLER 7/21/22



Return To: Grantee

90-831  
TRICT

**STATUTORY WARRANTY DEED**  
(AS 34.15.030)

0903 The GRANTOR, KENAI PENINSULA BOROUGH, an Alaska municipal corporation, whose address is 144 North Binkley Street, Soldotna, Alaska 99669, for ten dollars (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, and pursuant to Assembly Ordinance 91-20 enacted July 9, 1991, conveys and warrants unto the GRANTEE(S), Pixie A. Smith, a single person, whose address of record is 309 Katmai Avenue, Soldotna, Alaska 99669, her heirs, successors and assigns, the following described real property:

Tract B, Quartz Creek Subdivision, according to Plat No. 94-11, on file in the Seward Recording District, Third Judicial District, State of Alaska,

TOGETHER WITH all the improvements thereon, if any, and all rights of the Grantor to any and all hereditaments and appurtenances hereto, and

SUBJECT TO any taxes and assessments, exceptions, reservations, restrictions, conditions, covenants, easements, rights-of-way, encroachments either of record or ascertainable by physical inspection, including without limitation, pursuant to Ordinance 91-20, a 50-foot conservation easement around the perimeter of the parcel wherein no live, naturally existing vegetation over 3" in diameter shall be removed except for a 50-foot wide entry and a 50-foot wide exit, and

FURTHER SUBJECT TO a restrictive covenant pursuant to KPB 17.10.130(D), that the real property described in this conveyance instrument shall be used for commercial and light industrial purposes as defined hereinbelow, and that the use of the land for any other purpose is prohibited, provided that this restriction may be modified by the Borough Assembly pursuant to KPB 17.10.130(F) as presently enacted. Pursuant to KPB 17.10.250(D), "commercial" means lands suitable for development or location of service oriented facilities such as stores, offices, medical clinics, restaurants, lodges, vehicular service stations, hotels, and camper parks, and able to support on-sight water and sewer systems or capable of receiving water and/or sewer service, near public utilities and in proximity to residential areas. Pursuant to KPB 17.10.250(R) and legislative intent supporting adoption of KPB Ordinance 91-20, "light industrial" means lands suitable for industrial uses that generally do not have offensive characteristics and can be conducted primarily inside closed buildings. Such uses may include warehousing, storage inside enclosed area, light manufacturing not inside buildings, and the development of sawmills or other wood processing.

KENAI PENINSULA BOROUGH:

Mike Navarre  
Mike Navarre, Mayor  
Dated: 4-30-98

GRANTEE(S):

Pixie A. Smith  
Pixie A. Smith  
Dated: 5-1-98



# LEGEND:

- 3 1/4" ALUM. CAP MONUMENT BLM 1986 FOUND
- 2 1/2" ALUM. CAP MONUMENT LS5152 2000 FOUND
- 3 1/4" ALUM. CAP MONUMENT 1928-S 1992 FOUND
- 2 1/2" ALUM. CAP MONUMENT 4469-S 2003 FOUND
- 5/8" REBAR w/ 2" ALUM. CAP MCLANE 1994 FOUND
- 5/8" REBAR w/PLASTIC CAP LS8859 SET
- ( ) RECORD DATUM PLAT 2004-9 KRD

## CERTIFICATE of ACCEPTANCE

THE UNDERSIGNED OFFICIAL IDENTIFIED BY NAME AND TITLE IS AUTHORIZED TO ACCEPT AND HEREBY ACCEPTS ON BEHALF OF THE KENAI PENINSULA BOROUGH FOR PUBLIC USES AND FOR PUBLIC PURPOSES THE REAL PROPERTY TO BE DEDICATED BY THIS PLAT INCLUDING EASEMENTS, RIGHTS-OF-WAY, ALLEYS, AND OTHER PUBLIC AREAS SHOWN ON THIS PLAT IDENTIFIED AS FOLLOWS: OUTFITTERS WAY DEDICATION. THE ACCEPTANCE OF LANDS FOR PUBLIC USE OR PUBLIC PURPOSE DOES NOT OBLIGATE THE PUBLIC OR ANY OTHER GOVERNING BODY TO CONSTRUCT, OPERATE, OR MAINTAIN IMPROVEMENTS.

AUTHORIZED OFFICIAL  
KENAI PENINSULA BOROUGH

DATE

## PLAT APPROVAL

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF JUNE 13, 2022.

KENAI PENINSULA BOROUGH

AUTHORIZED OFFICIAL



## SURVEYOR'S CERTIFICATE

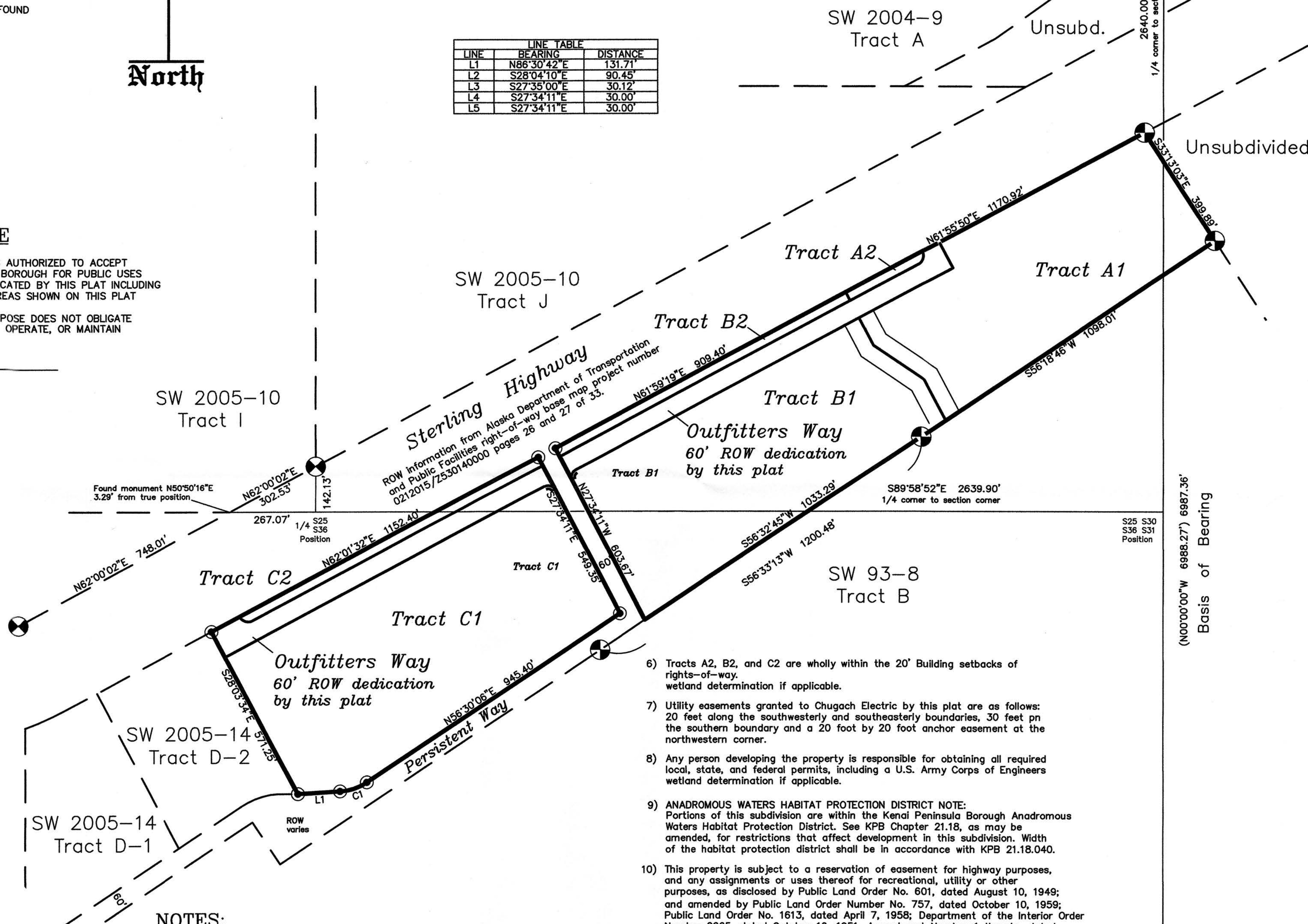
I hereby certify that I am properly registered and licensed to practice land surveying in the State of Alaska, this plat represents a survey made by me or under my direct supervision, the monuments shown hereon actually exist as described, and all dimensions and other details are correct.

Date

North

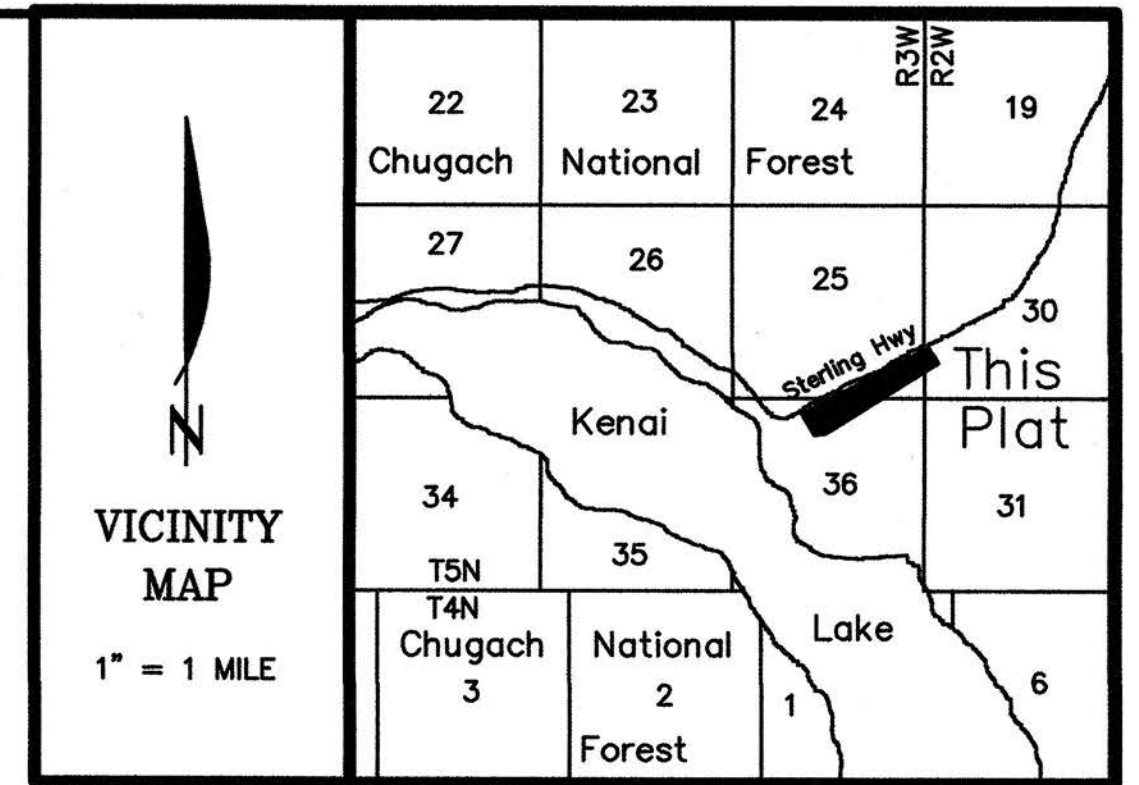
CURVE	DELTA ANGLE	RADIUS	ARC LENGTH	TANGENT	CHORD LENGTH	CHORD BEARING
C1	29°59'58"	170.00'	89.01'	45.55'	88.00'	S71°30'44"W
C2	90°00'00"	30.00'	47.12'	30.00'	42.43'	S72°58'28"E
C3	90°24'17"	25.00'	39.45'	25.18'	35.48'	N72°46'19"W
C4	89°33'30"	25.00'	39.08'	24.81'	35.22'	N17°12'34"E
C5	90°44'54"	30.00'	47.52'	30.39'	42.70'	S16°36'52"W

LINE	BEARING	DISTANCE
L1	N86°30'42"E	131.71'
L2	S28°04'10"E	90.45'
L3	S27°35'00"E	30.12'
L4	S27°34'11"E	30.00'
L5	S27°34'11"E	30.00'



## NOTES:

- 1) Basis of bearing taken from Russian Gap Subdivision 2004 Addition, Plat 2004-9, Seward Recording District.
- 2) Building Setback-A setback of 20 feet is required from all street Rights-of-Way unless a lesser standard is approved by resolution by the appropriate Planning Commission.
- 3) Covenants, conditions, and restrictions which affect this subdivision are recorded in Book 90 Page 831 Seward Recording District. The borough will not enforce private covenants, easements, or deed restrictions per KPB 21.44.080.
- 4) An easement between the Kenai Peninsula Borough and Pixie A. Smith is recorded in Book 90 Page 833 Seward Recording District.
- 5) Roads must meet the design and construction standards established by the Borough in order to be considered for certification and inclusion in the Borough road maintenance program.
- 6) Tracts A2, B2, and C2 are wholly within the 20' Building setbacks of rights-of-way. wetland determination if applicable.
- 7) Utility easements granted to Chugach Electric by this plat are as follows: 20 feet along the southwesterly and southeasterly boundaries, 30 feet on the southern boundary and a 20 foot by 20 foot anchor easement at the northwestern corner.
- 8) Any person developing the property is responsible for obtaining all required local, state, and federal permits, including a U.S. Army Corps of Engineers wetland determination if applicable.
- 9) ANADROMOUS WATERS HABITAT PROTECTION DISTRICT NOTE: Portions of this subdivision are within the Kenai Peninsula Borough Anadromous Waters Habitat Protection District. See KPB Chapter 21.18, as may be amended, for restrictions that affect development in this subdivision. Width of the habitat protection district shall be in accordance with KPB 21.18.040.
- 10) This property is subject to a reservation of easement for highway purposes, and any assignments or uses thereof for recreational, utility or other purposes, as disclosed by Public Land Order No. 601, dated August 10, 1949; and amended by Public Land Order Number No. 757, dated October 10, 1959; Public Land Order No. 1613, dated April 7, 1958; Department of the Interior Order Number 2665, dated October 16, 1951, Amendment Number 1 thereto, dated July 17, 1952 and Amendment Number 2 thereto, dated September 15, 1956, filed in the Federal Register.
- 11) No access to State maintained ROW's permitted unless approved by the State of Alaska Department of Transportation.
- 12) An easement for electrical lines or system and/or telephone lines which affects a portion of Tract A, granted to Chugach Electric Association, Inc. is recorded as serial number 2004-000989-0, Seward Recording District.
- 13) Front 10 feet adjacent to right-of-ways and 20 feet within 5 feet of the side lot lines is a utility easement. No permanent structure shall be constructed or placed within a utility easement which would interfere with the ability of a utility to use the easement.
- 14) WASTEWATER DISPOSAL: These lots are at least 200,000 square feet and conditions may not be suitable for onsite wastewater treatment and disposal. Any wastewater treatment or disposal system must meet the regulatory requirements of the Alaska Department of Environmental Conservation.



## CERTIFICATE of OWNERSHIP and DEDICATION

I, THE UNDERSIGNED, HEREBY CERTIFY THAT THE KENAI PENINSULA BOROUGH IS THE OWNER OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON, AND ON BEHALF OF THE KENAI PENINSULA BOROUGH, I HEREBY ADOPT THIS PLAN OF SUBDIVISION, AND BY MY FREE CONSENT DEDICATE ALL RIGHTS-OF-WAY AND GRANT ALL EASEMENTS TO THE USE SHOWN.

CHARLIE PIERCE, MAYOR  
KENAI PENINSULA BOROUGH  
144 N BINKLEY STREET  
SOLDOTNA, ALASKA 99669  
TRACTS A AND C

## CERTIFICATE of OWNERSHIP and DEDICATION

I, THE UNDERSIGNED, HEREBY CERTIFY THAT THREE BEAR ALASKA INC IS THE OWNER OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON, AND ON BEHALF OF THREE BEAR ALASKA INC, I HEREBY ADOPT THIS PLAN OF SUBDIVISION, AND BY MY FREE CONSENT DEDICATE ALL RIGHTS-OF-WAY AND GRANT ALL EASEMENTS TO THE USE SHOWN.

DAVID A. WEISZ, PRESIDENT/CEO  
THREE BEARS ALASKA INC  
445 N. PITTMAN ROAD, SUITE B  
WASILLA, ALASKA 99623  
Tract B

## NOTARY'S ACKNOWLEDGEMENT

FOR  
ACKNOWLEDGED BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_.

NOTARY PUBLIC FOR ALASKA  
MY COMMISSION EXPIRES \_\_\_\_\_

## NOTARY'S ACKNOWLEDGEMENT

FOR  
ACKNOWLEDGED BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_.

NOTARY PUBLIC FOR ALASKA  
MY COMMISSION EXPIRES \_\_\_\_\_

KPB FILE No. 2022-060V

## Quartz Creek Subdivision Outfitters Way Replat and Section Line Easement Vacation

A resubdivision of Tracts A, B, and C, Quartz Creek Subdivision Plat 94-11, Seward Recording District.

Located within the SW1/4 Section 30, T5N, R2W, the SE1/4 Section 25 and the N1/2 Section 36, T5N, R3W, S.M., Kenai Peninsula Borough, Alaska.

Containing 40.040 Ac.

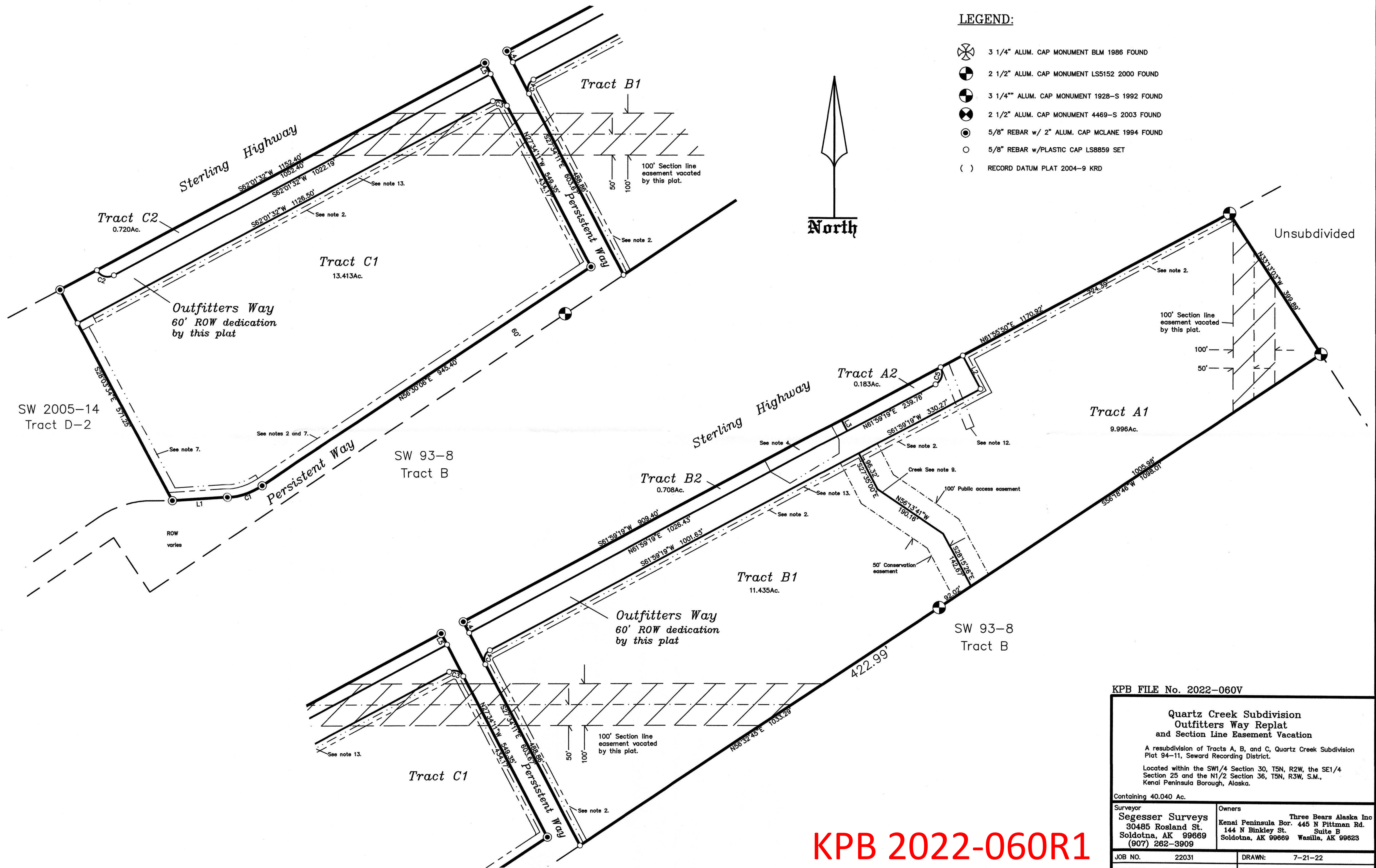
Surveyor  
**Segesser Surveys**  
30485 Rosland St.  
Soldotna, AK 99669  
(907) 262-3909

Owners  
**Three Bears Alaska Inc.**  
Kenai Peninsula Bor. 445 N Pittman Rd.  
Soldotna, AK 99669  
Suite B  
Wasilla, AK 99623

JOB NO.	22031	DRAWN:	7-18-22
SURVEYED:	March, 2022	SCALE:	1"=100'
FIELD BOOK:	22-1	SHEET:	2 of 2

KPB 2022-060R1





KPB 2022-060R1

KPB FILE No. 2022-060V			
<b>Quartz Creek Subdivision</b> <b>Outfitters Way Replat</b> <b>and Section Line Easement Vacation</b>			
A resubdivision of Tracts A, B, and C, Quartz Creek Subdivision Plat 94-11, Seward Recording District.			
Located within the SW1/4 Section 30, T5N, R2W, the SE1/4 Section 25 and the N1/2 Section 36, T5N, R3W, S.M., Kenai Peninsula Borough, Alaska.			
Containing 40.040 Ac.			
Surveyor	Owners		
Segesser Surveys	Three Bears Alaska Inc		
30485 Rosland St.	Kenai Peninsula Bor. 445 N Pittman Rd.		
Soldotna, AK 99669	144 N Binkley St. Suite B		
(907) 262-3909	Soldotna, AK 99669 Wasilla, AK 99623		
JOB NO.	22031	DRAWN:	7-21-22
SURVEYED:	March, 2022	SCALE:	1"=100'
FIELD BOOK:	22-1	SHEET:	2 of 2

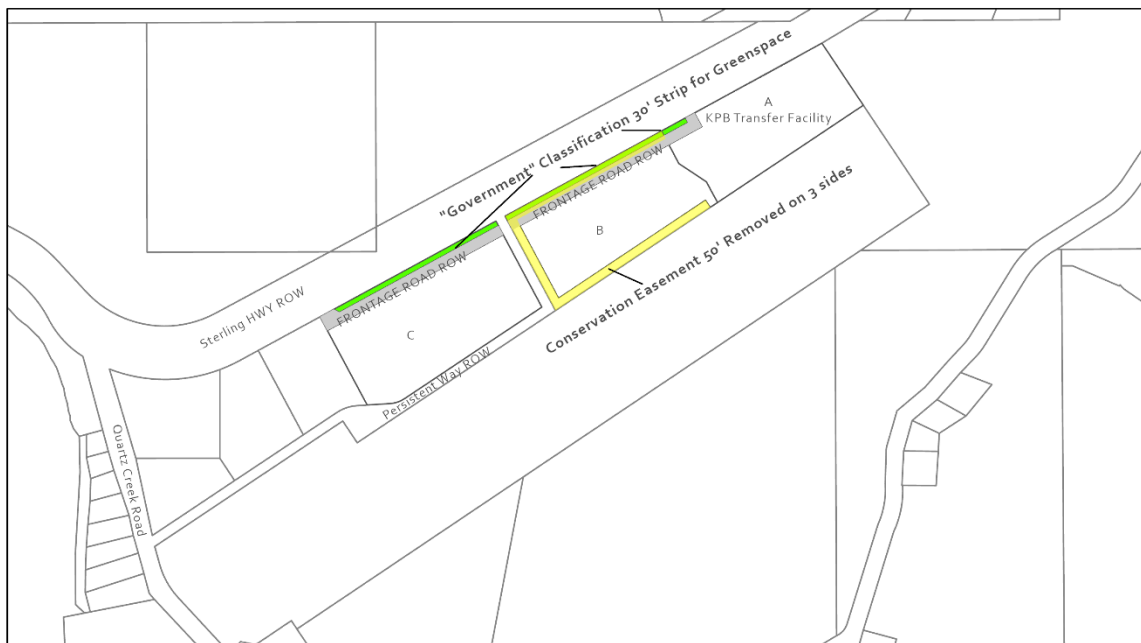


144 N. Binkley Street, Soldotna, AK 99669. <https://kpb.legistar.com/Calendar.aspx>

**Additional Information:** For further information contact Marcus Mueller, Land Management Division at 907-714-2205, or toll free within the Borough 1-800-478-4441, ext. 2205.

The Kenai Peninsula Borough reserves the right to waive technical defects in this publication.

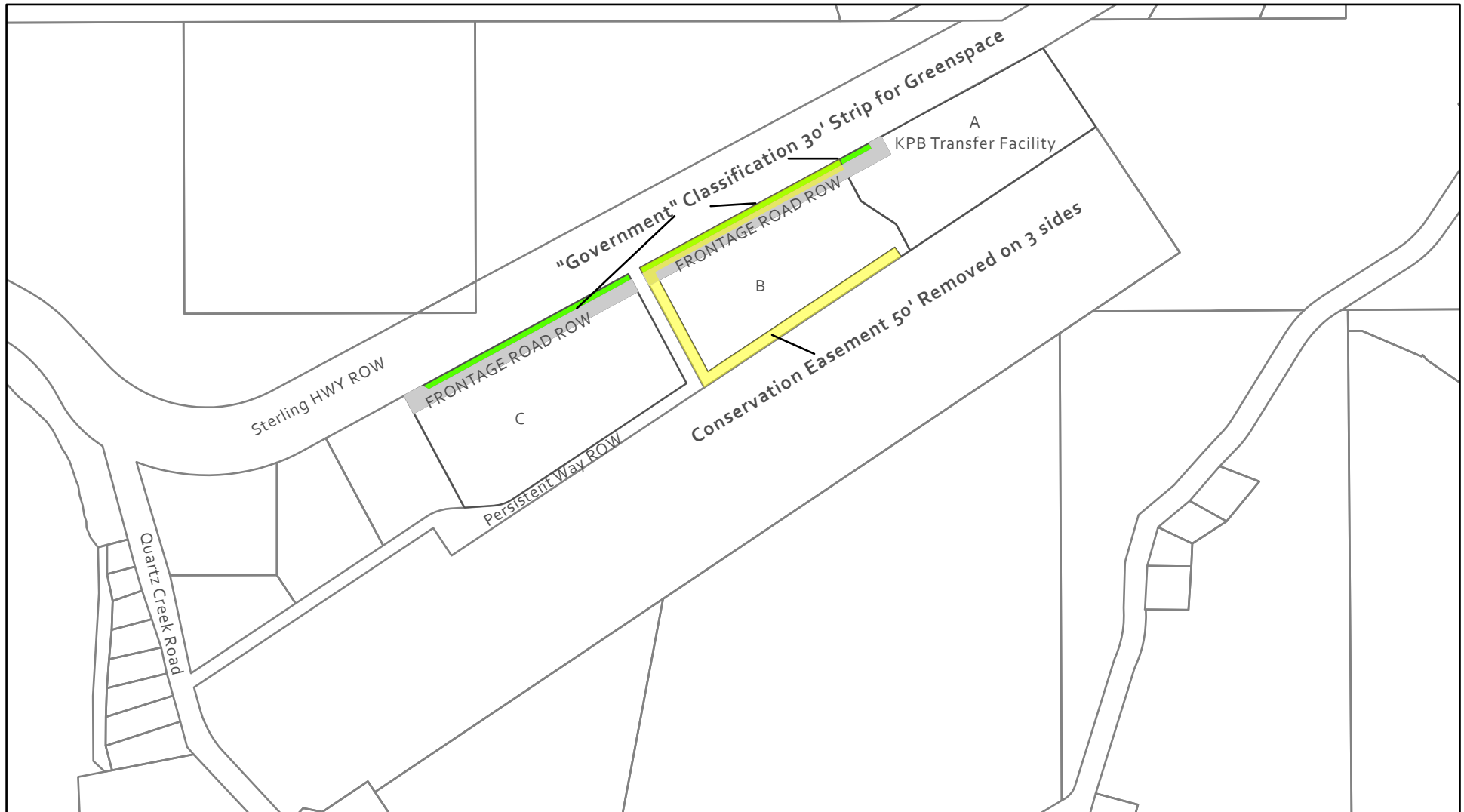
Conservation Easement to Be Removed  
&  
30-Foot Strip to be Classified "Government"



TRACTS A, B, C Quartz Creek Subdivision  
Sketch of Preliminary Plat Proposed as  
Quartz Creek Subdivision Outfitters Way Replat

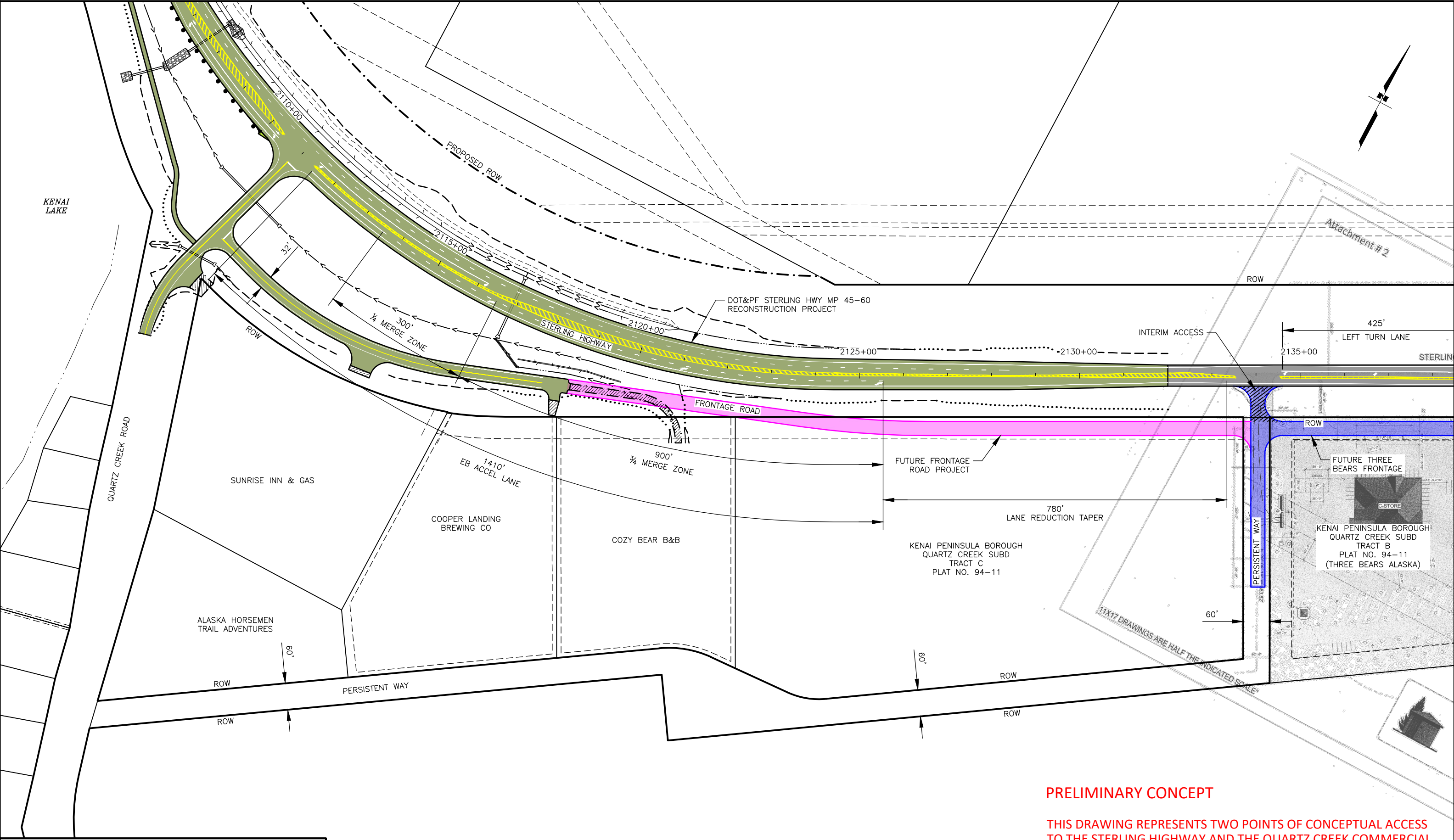
DIAGRAM PREPARED BY:  
M. MUELLER 7/19/22

# Conservation Easement to Be Removed & 30-Foot Strip to be Classified "Government"



TRACTS A, B, C Quartz Creek Subdivision  
Sketch of Preliminary Plat Proposed as  
Quartz Creek Subdivision Outfitters Way Replat

DIAGRAM PREPARED BY:  
M. MUELLER 7/19/22

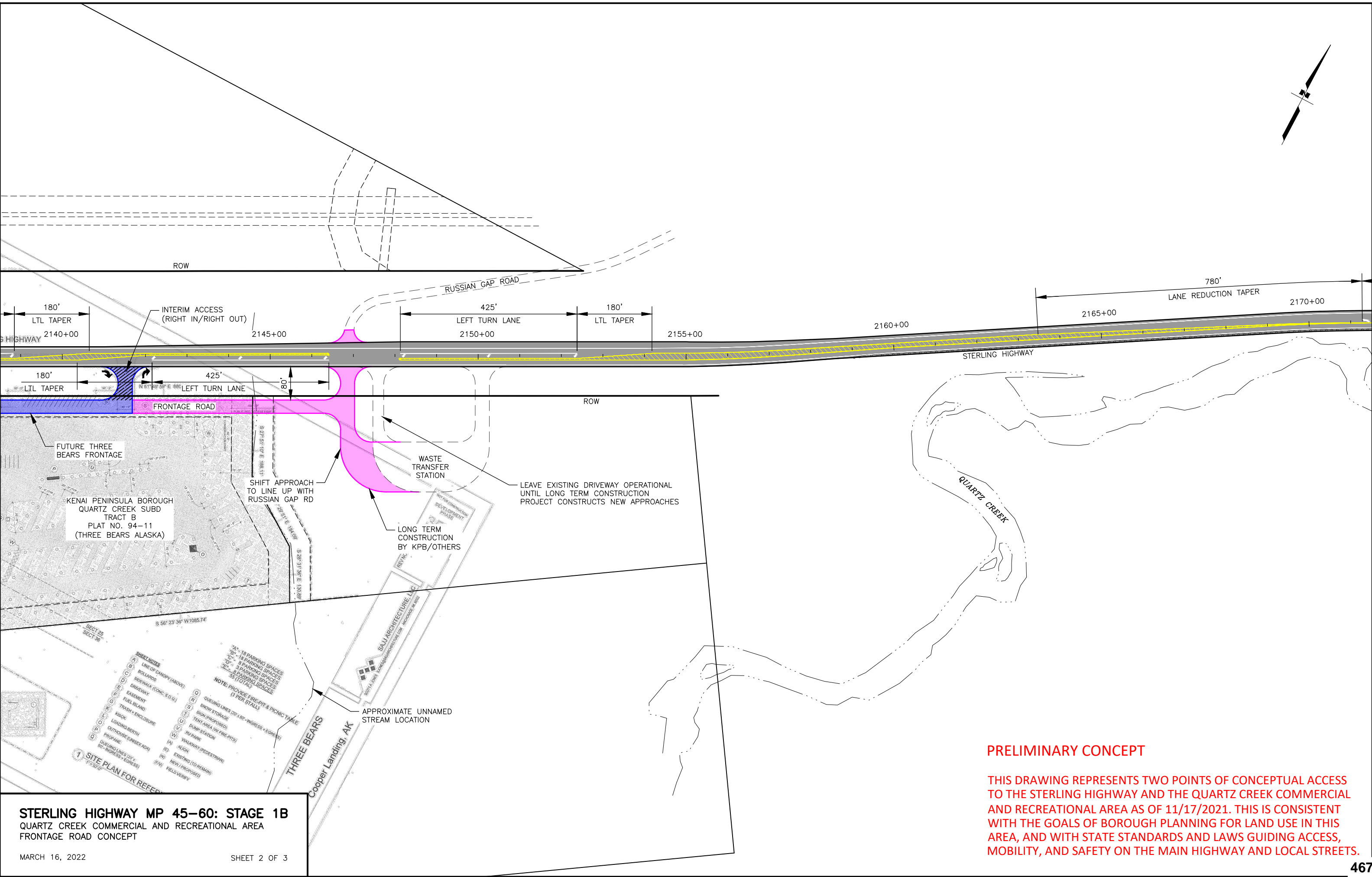


**STERLING HIGHWAY MP 45-60: STAGE 1B**  
QUARTZ CREEK COMMERCIAL AND RECREATIONAL AREA  
FRONTAGE ROAD CONCEPT

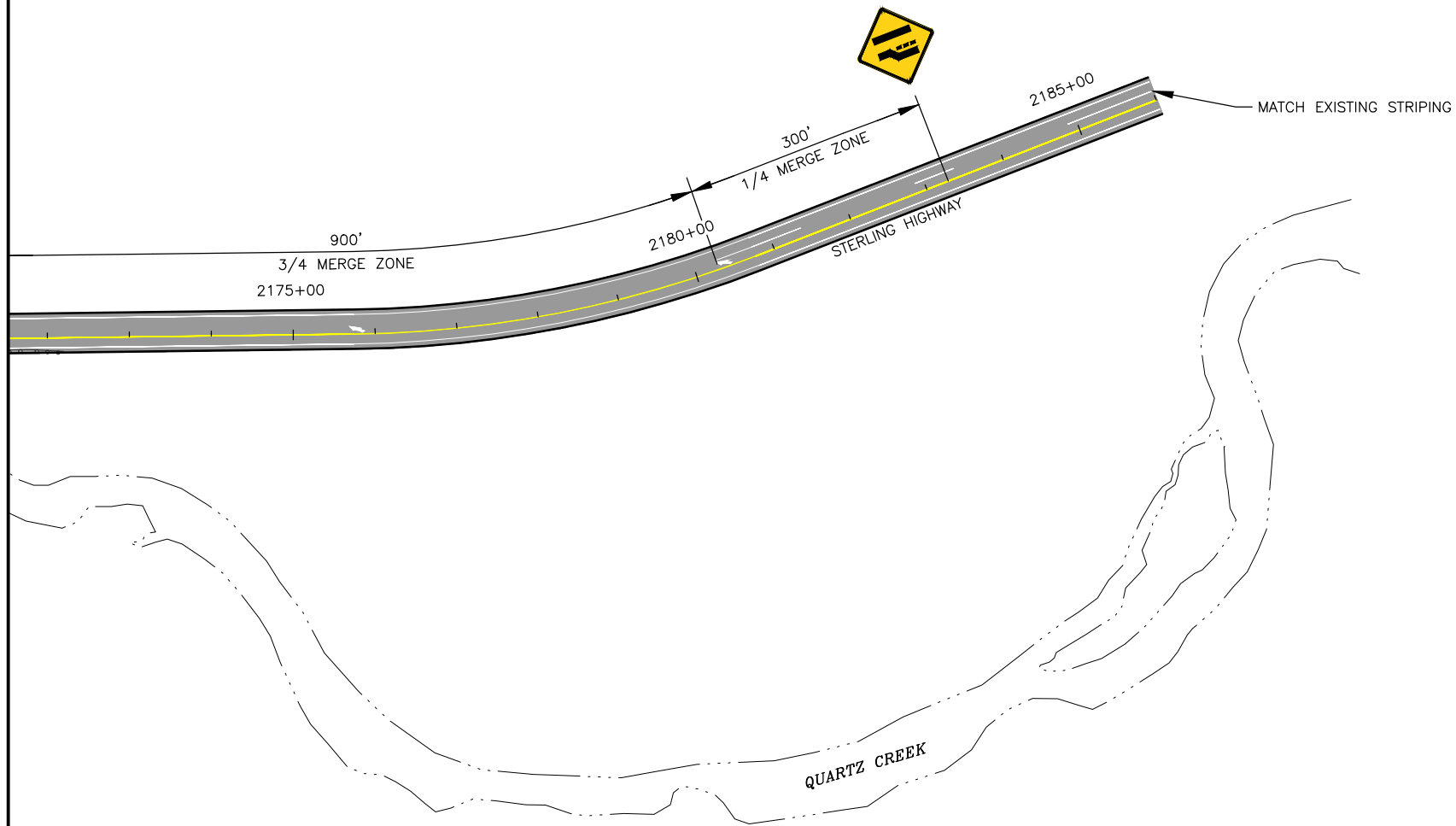
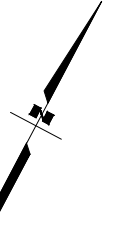
MARCH 16, 2022 SHEET 1 OF 3

**PRELIMINARY CONCEPT**

THIS DRAWING REPRESENTS TWO POINTS OF CONCEPTUAL ACCESS TO THE STERLING HIGHWAY AND THE QUARTZ CREEK COMMERCIAL AND RECREATIONAL AREA AS OF 11/17/2021. THIS IS CONSISTENT WITH THE GOALS OF BOROUGH PLANNING FOR LAND USE IN THIS AREA, AND WITH STATE STANDARDS AND LAWS GUIDING ACCESS, MOBILITY, AND SAFETY ON THE MAIN HIGHWAY AND LOCAL STREETS.







**STERLING HIGHWAY MP 45-60: STAGE 1B**  
QUARTZ CREEK COMMERCIAL AND RECREATIONAL AREA  
FRONTAGE ROAD CONCEPT

MARCH 16, 2022

SHEET 3 OF 3

### PRELIMINARY CONCEPT

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Introduced by: Mayor  
Date: April 30, 1991  
Hearing: June 18, 1991  
Action: FAILED AS AMENDED  
Vote: 6 YES, 9 NO  
MOTION TO RECONSIDER: BROWN  
Reconsidered: 7/9/91  
Action: ENACTED AS AMENDED  
Vote: 9 YES, 5 NO

KENAI PENINSULA BOROUGH  
ORDINANCE 91-20

AUTHORIZING A LEASE WITH OPTION TO PURCHASE FOR SHERMAN C. SMITH ON LANDS LOCATED IN THE COOPER LANDING VICINITY AND LOCATED WITHIN A PORTION OF THE NW $\frac{1}{4}$ NE $\frac{1}{4}$  OF SECTION 36 AND A PORTION OF THE S $\frac{1}{2}$ SE $\frac{1}{4}$  OF SECTION 25, TOWNSHIP 5 NORTH, RANGE 3 WEST, SEWARD MERIDIAN AND CLASSIFYING THESE LANDS AS "SALE LANDS"

WHEREAS, an application has been received from Sherman C. "Red" Smith for purchase of ten acres, more or less, located in the Cooper Landing area, for industrial development; and,

WHEREAS, the borough selected the subject land pursuant to the Municipal Entitlement Act and has received a final decision from the State of Alaska approving the selection; and

WHEREAS, a final decision does transfer certain management rights of the land allowing the borough to enter into leases, grant permits, easements, rights-of-way and dispose of lands; and,

WHEREAS, it is not borough policy to sell or otherwise convey title in lands until patent has been issued by the State of Alaska and received by the borough; and,

WHEREAS, on March 11, 1991, a memorandum, maps and supporting backup was sent out for review and comments to the School District, Cooper Landing Community Club, Cooper Landing Advisory Planning Commission, East Peninsula Road Service Area and departments of the borough; and,

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

Section 1. That a long-term lease with option to purchase is hereby authorized for ten acres, more or less, located within a portion of NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 36 and S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 25, Township 5 North, Range 3 West, Seward Meridian, Alaska.

Section 2. That the subject lands are hereby classified as "Sale Lands" pursuant to Chapter 17.04 of the KPB Code of Ordinances.

Section 3. That the plat which creates the subject ten acre parcel shall designate a fifty foot conservation easement around the perimeter of the site, exclusive of a fifty foot wide entry and exit wherein no live, naturally existing vegetation over 3" in diameter shall be removed.

Section 4. That the annual lease shall be at the rate of six percent (6%) of the borough assessed valuation and shall be reappraised every five (5) years and the fee adjusted accordingly.

Section 5. That upon the borough receiving patent, the lessee may exercise his option to purchase the subject land at the current fair market value. Said purchase may be made by payment in full or a minimum down payment of ten percent (10%) of the fair market value with the remaining principal balance payable in installments at the rate of ten (10%) percent interest.

Section 6. That the Mayor is authorized to sign any documents necessary to effectuate this ordinance and deemed to be in the best interest of the borough.

ENACTED THIS 9<sup>th</sup> DAY OF July BY THE ASSEMBLY OF  
THE KENAI PENINSULA BOROUGH.

James W. Skogstad  
James W. Skogstad, Assembly President

ATTEST:

Angie Nauyas  
Borough Clerk

Introduced by:	Mayor
Date:	08/09/22
Hearing:	09/06/22
Action:	Enacted
Vote:	5 Yes, 4 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-32**

**AN ORDINANCE AMENDING BOROUGH CODE TO REMOVE REQUIREMENTS  
FOR NEWSPAPER PUBLICATION OF DELINQUENT SALES TAX LISTS AND  
PUBLIC POSTING OF CERTIFICATES OF REGISTRATION LISTS AND  
PROVIDING INSTEAD FOR PUBLICATION OF SUCH INFORMATION ON THE  
BOROUGH WEBSITE**

- WHEREAS,** Kenai Peninsula Borough (“KPB”) 5.18.620 requires the publication of delinquent sales tax lists to be published in a newspaper; and
- WHEREAS,** the costs of such publication have risen significantly in recent years even with the KPB Finance Department doing more and more of the formatting and pre-publication work for the newspaper; and
- WHEREAS,** printed newspaper circulation has been in decline for many years and area newspapers are relying more and more on digital distribution of their newspapers; and
- WHEREAS,** KPB 5.18. 900 defines “newspaper” in part, as “printed paper sheets” thus mandating the use of non-digital printed newspaper distribution; and
- WHEREAS,** delinquent sales tax accounts are also provided specific notice through communications sent through the U.S. mail and e-mail, when known, that provides them notice of the account delinquency; and
- WHEREAS,** other KPB departments and service areas are moving towards using, or actively using, the KPB website for required public notices;

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

**SECTION 1.** That KPB 5.18.330 is hereby amended as follows:

**5.18.330. Registration—Certificate index.**

[THE MAYOR OR HIS DESIGNEE] The finance director shall maintain [IN A PUBLIC PLACE WITHIN THE BOROUGH ADMINISTRATION BUILDING] on the borough website a current list alphabetized by name of business and name of owner, updated not less than quarterly, of all current certificates of registration for public inspection.

**SECTION 2.** That KPB 5.18.620(F) is hereby amended as follows:

**5.18.620. Enforcement—Failure to file returns or remit taxes—Criminal penalty—Civil penalties and interest—Injunction—Publication.**

...


F. As soon as practicable after the expiration of thirty days following the end of each calendar quarter, the borough shall publish [IN A NEWSPAPER OF GENERAL OR CUSTOMARY CIRCULATION IN THE APPROPRIATE AREA OF THE BOROUGH,] on its website a list of every seller who:

1. Was conducting business in the borough and was required to file a return during that quarter, but who has not filed the required return, unless the seller has paid any balance due for that period in full;
2. Did not pay all balances due, as long as the balance due is greater than \$100; or
3. Owes taxes, penalty or interest pursuant to a payment agreement unless the payment agreement required payment in full within 30 days of the date of execution of the agreement.

...

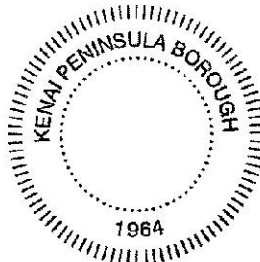
**SECTION 3.** That this ordinance is effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY OF SEPTEMBER, 2022.**

  
Brent Johnson, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



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


# Kenai Peninsula Borough


## Finance Department

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### MEMORANDUM

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

**THRU:** Charlie Pierce, Mayor 

**FROM:** Brandi Harbaugh, Finance Director 

**DATE:** July 28, 2022

**RE:** Ordinance 2022-32, Amending Borough Code to Remove Requirements for Newspaper Publication of Delinquent Sales Tax Lists and Public Posting of Certificates of Registration Lists and Providing Instead for Publication of Such Information on the Borough Website (Mayor)

---

Borough code, at KPB 5.18.330, requires posting in a public place in the Borough administration building (presumably on a bulletin board) a quarterly list of holders of sales tax certificates of registration. During the COVID-19 pandemic, citizen visits to the Borough Administration Building in Soldotna dropped significantly, underscoring the need to change this requirement to posting on an "electronic bulletin board" instead; i.e. the borough website. Additionally, this will make the information readily available to the many citizens of the borough who do not regularly visit the borough administration building.

KPB 5.18.620 requires the posting in a newspaper of general circulation of a list of all sellers who have not filed sales tax returns, have not paid all balances due, or owe taxes, penalties and interest pursuant to a payment agreement. This requirement has become increasingly expensive for the Borough, even as Borough personnel are required to do more and more of the setup work on the list before it is delivered to the newspaper for printing. Additionally, it has been observed that actual printing of the lists on the newspaper inserts is not always legible. Local newspapers, more and more, are moving to digital distribution themselves, even as the current definition in KPB code, requires the use of a newspaper printed on paper.

Repealing the provision requiring printing in a newspaper and requiring posting on the Borough website will save approximately \$2,480 per year, and still ensure continued public notice.

Your consideration of the ordinance is appreciated.



Introduced by:	Mayor
Date:	08/09/22
Hearing:	09/06/22
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-35**

**AN ORDINANCE AMENDING KPB 14.31, SPECIAL ASSESSMENTS – ROAD  
IMPROVEMENTS, TO ADJUST APPLICABLE DEADLINES REGARDING  
APPLICATION AND REVIEW OF A ROAD IMPROVEMENT ASSESSMENT  
DISTRICT**

**WHEREAS,** in accordance with state law, KPB 14.31 sets forth the Kenai Peninsula Borough’s (Borough) process for initiating and assessing a Road Improvement Assessment District (RIAD); and

**WHEREAS,** currently, RIAD applications must be submitted by July 1 of each year, for construction in the following year; and

**WHEREAS,** RIAD projects have been managed by the special assessment coordinator, who is employed in the Borough’s Assessing Department; and

**WHEREAS,** in 2019, departmental duties for RIAD projects, including the public bidding process and awarding of contracts transferred from the Borough’s Roads Service Area to the Purchasing and Contracting Department; and

**WHEREAS,** the Borough’s Assessing Department, Road Service Area, and Purchasing and Contracting Department, have determined that additional time is necessary to complete an approved RIAD and to ensure construction is completed the year following application; and

**WHEREAS,** the Borough’s best interest would be served by amending these sections of code to change the RIAD application deadline to May 1, and the deadline for the Road Service Area Board to review all RIAD applications by July 1;

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

**SECTION 1.** That KPB 14.31.040 is hereby amended as follows:

**14.31.040. - Initiation of special assessment district.**

To initiate a petition for the formation of a special assessment district, the sponsor of the proposed district submits an application and a map or detailed description of the proposed geographic area subject to inclusion in the special assessment district to the borough assessor or assessor's designee. Applications to form a road improvement assessment district (RIAD) and participate in the RIAD match program shall be received no later than [JULY] May 1 of each year.

**SECTION 2.** That KPB 14.31.050(E) is hereby amended as follows:

**14.31.050. – Review of petition application.**

...

E. *RSA Board—Approval to proceed with engineer's estimate.* The RSA board shall review the staff reports for all RIAD applications timely submitted under KPB 14.31.040 no later than [SEPTEMBER] July 1 of each year, for construction in the following year. The road service area board shall consider the following factors in evaluating petition applications and determining whether to approve an order for an engineer's estimate:

1. Whether the road is currently on the maintenance system;
2. The number of petitions for projects received that year;
3. The funds available in the RIAD engineer's estimate fund established under KPB 5.20.160; and
4. Whether an application for district formation has been previously filed and whether conditions have changed that make the project more feasible than in past application years.

...

**SECTION 3.** That KPB 14.31.055(C) is hereby amended as follows:

**14.31.055. Road service area match program.**

...

C. The annual deadline application for the match program is [JULY] May 1 of each year, and must be submitted with the application to form a proposed district.

...

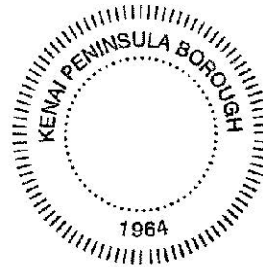
**SECTION 4.** That this ordinance shall be effective immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY OF SEPTEMBER, 2022.**

  
Brent Johnson, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



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


# Kenai Peninsula Borough

## Assessing Department

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### MEMORANDUM

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

THRU: Charlie Pierce, Mayor 

FROM: Adeena Wilcox, Director of Assessing *aw*

DATE: July 28, 2022

RE: Ordinance 2022-35, Amending KPB 14.31, Special Assessments – Road Improvements, to Adjust Applicable Deadlines Regarding Application and Review of a Road Improvement Assessment District (Mayor)

---

This ordinance amends the road improvement assessment district (RIAD) code, KPB Chapter 14.31, sections 14.31.040, 14.31.050(E), and 14.31.055(C). The amendments will change the RIAD application deadline to May 1 of each year, and change the deadline in which the Roads Service Area Board must review the applications to July 1.

Since 2015, RIAD applications must be submitted by July 1 of each year, for construction in the following year. RIAD projects are managed by the special assessment coordinator, who is employed in the Assessing Department. In 2019, departmental duties for RIAD projects, including the public bidding process and awarding of contracts, transferred from the Road Service Area to the Purchasing and Contracting Department. The Borough's Assessing Department, Road Service Area, and Purchasing and Contracting Department have determined that additional time is necessary to complete an approved RIAD and to ensure construction is completed the year following application.

The Borough's best interest would be served by amending code to change the RIAD application deadline to May 1, and the deadline for the Roads Service Area Board to review all RIAD applications by July 1.

Your consideration of the ordinance is appreciated.

Introduced by:

Mayor

Date:

09/06/22

Action:

Vote:

**KENAI PENINSULA BOROUGH  
RESOLUTION 2022-049**

**A RESOLUTION AUTHORIZING THE KENAI PENINSULA BOROUGH, AS THE  
LEAD AGENCY IN PARTNERSHIP WITH THE CITIES WITHIN THE KENAI  
PENINSULA BOROUGH, TO APPLY FOR THE SAFE STREETS AND ROADS FOR  
ALL ASSISTANCE GRANT, THROUGH THE OFFICE OF THE SECRETARY OF  
TRANSPORTATION, U.S. DEPARTMENT OF TRANSPORTATION IN THE AMOUNT  
OF \$1,200,000**

**WHEREAS,** the Safe Streets and Roads for All grant program with the Federal Assistance Number 20.939 (“the Program”) under the Office of the Secretary of Transportation, U.S. Department of Transportation, was established by the Bipartisan Infrastructure Law to fund local, regional, and tribal initiatives through grants to support the goal of zero deaths and serious injuries on public roadways; and

**WHEREAS,** there are two types of Program grants, an Action Plan Grant and an Implementation Grant, and eligible activities under the Program include developing a comprehensive safety action plan, conducting planning, design, and development activities in support of an action plan, and carrying out projects and strategies identified in the action plan; and

**WHEREAS,** an application through the Program requires an applicant to have a qualifying action plan in place and currently, the Kenai Peninsula Borough (“KPB”) and the co-applicant cities of Homer, Kenai, Seward and Soldotna (“Cities”) do not have action plans in place; and

**WHEREAS,** development of an action plan will better position the KPB to create safer streets and communities, and to pursue further grant opportunities in future funding cycles to improve the road systems within the KPB and the Cities (“the Project”); and

**WHEREAS,** as the regional government, the KPB is best suited to be the lead applicant for this grant opportunity, with the Cities as co-applicants; and

**WHEREAS,** the duration of the Project is expected to take two years; and

**WHEREAS,** the expected cost of the Project is anticipated to be \$1,200,000 with a 20 percent match requirement; and

**WHEREAS,** KPB’s total match requirement will be \$240,000, and the co-applicant Cities have agreed to fulfill their portion of the 20 percent match obligation upon acceptance and appropriation of the grant, if awarded; and

**WHEREAS,** the match can be fulfilled with either cash match requirements or allowable in-kind match requirements; and

**WHEREAS,** the calculation for how the cities will be providing their match will be determined based on the number of road miles and total population within their respective boundaries; and

**WHEREAS,** the calculation amount will be formalized in the acceptance and appropriation of the grant, if awarded; and

**WHEREAS,** it is in the KPB’s best interests to authorize the application for this grant;

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

**SECTION 1.** That the mayor, or designee, is authorized to negotiate, administer, and execute the applicant agreement package for the Program, and to negotiate, execute, and administer any other documents, agreements, and related grant application documents, including grant assurances and conditions, as required by the grant application process.

**SECTION 2.** That the mayor, or designee, is authorized to enter into intergovernmental agreements with the Cities as co-applicants to effectuate the intent and purpose of this resolution.

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

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

---

Brent Johnson, Assembly President

ATTEST:

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Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:




# Kenai Peninsula Borough

## Community & Fiscal Projects

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### MEMORANDUM

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

**THRU:** Charlie Pierce, Mayor   
Robert Ruffner, Planning Director *RR*  
Jed Painter, Acting Roads Director *JP*  
Brandi Harbaugh, Finance Director *BH*

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

**DATE:** August 25, 2022

**RE:** Resolution 2022-049, Authorizing the Kenai Peninsula Borough, as the Lead Agency in Partnership with the Cities within the Kenai Peninsula Borough, to Apply for the Safe Streets and Roads for All Assistance Grant through the Office of the Secretary of Transportation, U.S. Department of Transportation in the Amount of \$1,200,000 (Mayor)

---

The Safe Streets for All grant program is held under the Office of the Secretary of Transportation U.S. Department of Transportation, and is a federally funded grant opportunity that has a 20% match requirement with an assistance listing number of 20.939. This program was established as a part of the Bipartisan Infrastructure Law, and funds local, regional, and tribal initiatives through grants that support the goal of zero deaths and serious injuries on public roadways.

There are two types of grants within this grant program: the action planning grant and the implementation grant. The eligible activities under the action plan include a comprehensive safety action plan, conducting planning, design, and development activities in support of an action plan. Implementation plan eligible activities include the projects that carry out the activities that are listed within a safety action plan that meets the criteria of the Department of Transportation to be determined as a qualified safety action plan. Safety action plans are required in order to seek funding for any implementation projects that better the safety of road systems under this program.

Development of an approved and qualified safety action plan will better position the Borough and the Cities to pursue further grant opportunities in the future. It will also support the improvement of our road safety long term.

Page -2-  
August 25, 2022  
RE: Resolution 2022-049

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The duration of this project is expected to take two years, and the total cost of this project for all entities is \$1,200,000.00 with a 20% match equaling \$240,000.00. The match can be fulfilled with either cash, or allowable in-kind activities.

The calculation of how the cities will be providing their match will be determined based on a combination of the number of road miles in their boundaries and the total population in each area. The calculation amount will be formalized on acceptance and appropriation of the grant, if awarded. However, the estimated match calculation for each applicant is as follows:

Kenai Peninsula Borough	\$180,786
Kenai	\$ 21,449
Homer	\$ 17,110
Soldotna	\$ 12,420
Seward	\$ 7,500
Seldovia	\$ 735
<hr/>	
Total Match Requirement	\$240,000

It is in the best interests of the Borough to apply for this grant and for the mayor to have the ability to enter into agreements with the Cities as needed to ensure proper understanding for all applicants as to the rights and duties related to the lead and co-applicants.

Your consideration is appreciated.

Introduced By:  
Date:  
Action:  
Vote:

City Manager  
August 24, 2022  
Adopted  
6 Yes, 0 No

CITY OF SOLDOTNA  
RESOLUTION 2022-037

A RESOLUTION SUPPORTING THE KENAI PENINSULA BOROUGH'S APPLICATION FOR A  
SAFE STREETS AND ROADS FOR ALL (SS4A) ACTION PLAN GRANT AND AUTHORIZING  
THE CITY OF SOLDOTNA TO BE INCLUDED AS A JOINT APPLICANT

---

WHEREAS, the Safe Streets and Roads for All (SS4A) Grant Program, established under the Bipartisan Infrastructure Law, funds regional, local, and Tribal initiatives through grants that support the Department of Transportation's goal of zero deaths and serious injuries on our nation's roadways; and

WHEREAS, there are two types of SS4A grants: Action Plan Grants and Implementation Grants, and eligible activities for funding under the SS4A program include: develop or update a comprehensive safety action plan (Action Plan); conduct planning, design, and development activities in support of an Action Plan; and carry out projects and strategies identified in an Action Plan; and

WHEREAS, Implementation Grants require an applicant to have a qualifying Action Plan in place, and neither the City of Soldotna nor the Kenai Peninsula Borough (KPB) currently have a qualifying Action Plan in place; and

WHEREAS, development of an Action Plan will better position the City of Soldotna and the KPB to pursue Implementation Grants through the SS4A program in future funding cycles, and to pursue other grant funding focused on improving roadway safety and investing in improvements to transportation infrastructure; and

WHEREAS, the guidelines for the SS4A Grant Program encourage joint applications that engage multiple jurisdictions in the same region in order to ensure collaboration and leverage local expertise; and

WHEREAS, as the regional government, the KPB has agreed to apply as the lead applicant with participating municipalities included as joint applicants for the SS4A Action Plan Grant; and

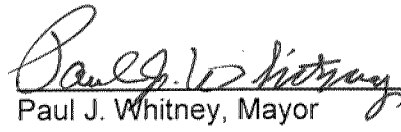
WHEREAS, it is in the best interest of the City of Soldotna to support the KPB's application and participate as a joint applicant for the SS4A Action Plan Grant;

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

Section 1. This resolution supports the Kenai Peninsula Borough's application for a Safe Streets and Roads for All Action Grant, and authorizes the City to sign on as a joint applicant for the purposes of developing a comprehensive safety action plan for the Kenai Peninsula Borough and the cities within the Borough.

Section 2. This resolution shall become effective immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL THIS 24TH DAY OF AUGUST, 2022.

  
Paul J. Whitney, Mayor

ATTEST:

  
Brekke Hewitt, CMC, Interim City Clerk

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



# SOLDOTNA

City of Soldotna, Alaska

177 North Birch Street  
Soldotna, AK 99669  
907.262.9107  
[www.soldotna.org](http://www.soldotna.org)

TO: Mayor Whitney and City Council

THROUGH: Stephanie Queen, City Manager

FROM: John Czarnezki, Director ED+P  
Laura Rhyner, Assistant to the City Manager

DATE: August 11, 2022

SUBJ: Support for KPB's Application for Safe Streets and Road for All (SS4A) Planning Grant

The Safe Streets for All (SS4A) program is focused on roadway safety with the goal of zero deaths and serious injuries on our nation's roadways. Two types of SS4A grants are available: 1) Action Plan Grants; and 2) Implementation Grants. Implementation grants require that a community have a comprehensive safety action plan in place. Neither the Kenai Peninsula Borough (KPB), nor any of its incorporated communities have a current action plan that meets the requirements of the SS4A program. Upon adoption of an Action Plan, the cities and borough would be eligible to apply for SS4A implementation grants in future funding cycles.

Implementation grants are awarded for the purpose of carrying out projects and strategies identified in the Action Plan, including planning, design, and development activities related to those projects and activities.

The SS4A grant program encourages multi-jurisdictional applications. As the regional government, the KPB has agreed to apply as the lead applicant, with participating municipalities included as joint applicants.

The Resolution before you provides the City's support to the Borough to apply for an Action Plan Grant, with the City of Soldotna included as a joint applicant. Upon grant award, it is anticipated that a memorandum of agreement would be signed between the Borough and the municipalities to further define the project scope, cost and timing. If approved, the Action Plan will be funded at an 80/20 cost share rate. All participating communities and the KPB would share in the 20% cost share obligation. It is estimated that the City's share of the cost for plan development would not exceed \$20,000.

Thank you for your consideration.

Introduced by:	Mayor
Date:	09/06/22
Hearing:	09/20/22
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-19-15**

**AN ORDINANCE ACCEPTING GRANT FUNDS FROM  
THE STATE OF ALASKA DIVISION OF HOMELAND SECURITY & EMERGENCY  
MANAGEMENT AND THE FEDERAL EMERGENCY MANAGEMENT AGENCY TO  
REIMBURSE COSTS ASSOCIATED WITH DISASTER RECOVERY EFFORTS  
RELATED TO THE LOWELL POINT ROAD LANDSLIDE**

**WHEREAS,** on May 7, 2022 a significant landslide on Bear Mountain in Seward Alaska, blocked off Lowell Point Road for 30 days and cut off the residents of Lowell Point from essential services; and

**WHEREAS,** the Federal Disaster Declaration DR-4661 is expected to reimburse eligible expenses associated with response and recovery to be reimbursed; and

**WHEREAS,** the Kenai Peninsula Borough (“Borough”) has submitted one project application through the State of Alaska and Federal Emergency Management Agency Public Assistance program for emergency response; and

**WHEREAS,** costs for the emergency response in the amount of \$122,254.89 will be reimbursed to the Borough as a 75 percent federal pass-through and a 25 percent state-matching grant awarded by the State of Alaska Division of Homeland Security & Emergency Management;

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

**SECTION 1.** That the mayor is authorized to accept grant funds totaling \$122,254.89 from the State of Alaska Division of Homeland Security & Emergency Management (“AKDHSEM”) for the May 7, 2022 Landslide, Federal Disaster Declaration DR4661.

**SECTION 2.** That the mayor, or designee, is authorized to negotiate, administer and execute on behalf of the borough the applicant agreement package for disaster presently identified as the May 7, 2022 Landslide, Federal Disaster Declaration DR4661, and to negotiate, execute, and administer any other documents, agreements, and contracts required under or related to the grant agreements including without limitation the Assurances and Agreements, the Summary of Grant Conditions for All Applicants, and the Indemnity and Hold Harmless Agreement required as a

condition of the grant agreements and any subsequent grant amendments.

**SECTION 3.** That the Kenai Peninsula Borough agrees that upon award of assistance through the Alaska Division of Homeland Security & Emergency Management as described in this ordinance, it shall waive its sovereign immunity to the extent required by paragraph 27 of the AKDHSEM Form 30-57f State Assurance and Agreements and be subject to suit for actions arising out of the project activities for the May 7, 2022 Landslide disaster in the same manner, and to the same extent as any person, and will not be immune or exempt from any administrative or judicial process, sanction or judgement.

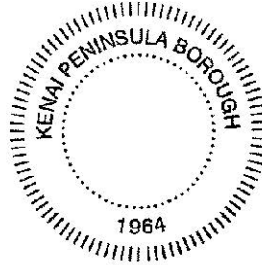
**SECTION 4.** That this ordinance shall be effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 20TH DAY OF SEPTEMBER, 2022.**

  
Brent Johnson, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



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




# Kenai Peninsula Borough

## Community & Fiscal Projects

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### MEMORANDUM

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

**THRU:** Charlie Pierce, Mayor  *BA*  
Brandi Harbaugh, Finance Director  
Brenda Ahlberg, Emergency Manager *BA*

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

**DATE:** August 25, 2022

**SUBJECT:** Ordinance 2022-19-15, Accepting Grant Funds from the State of Alaska Division of Homeland Security & Emergency Management and the Federal Emergency Management Agency to Reimburse Costs Associated with Disaster Recovery Efforts Related to the Lowell Point Road Landslide (Mayor)

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On May 7, 2022, a landslide from Bear Mountain in Seward Alaska covered Lowell Point Road and cut off Lowell Point residents from essential services for 30 days. Disaster declarations were made by the City of Seward on May 12, 2022, Kenai Peninsula Borough on May 13, 2022, and the State of Alaska on May 13, 2022. The Kenai Peninsula Borough extended its disaster declaration on May 17, 2022. President Biden declared the Lowell Point landslide a federal disaster on July 26, 2022.

This ordinance will accept funds of \$122,254.89 from the State of Alaska Division of Homeland Security & Emergency Management (AKDHSEM), and from the Federal Emergency Management Agency, for costs incurred related to responding to the May 7, 2022 landslide for Federal Disaster Declaration DR4661.

An amount of \$65,960, which is accounted for in the \$122,254.89, will be paid on behalf of the Kenai Peninsula Borough to Miller's Landing by the AKDHSEM for the transportation of individuals to and from Lowell Point.


The project application and grant awards are managed through the Federal Emergency Management Agency online system named Grants Portal, and the award agreements created through the AKDHSEM as project worksheets.

Page -2-  
August 25, 2022  
Re: O2022-19-15

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The approved expenses associated with response, recovery and mitigation are eligible for reimbursement by the Federal Emergency Management Agency (75% share) and the State of Alaska (25%) through the FEMA Public Assistance Program under project work sheet 790 for Lowell Point Road.

Your consideration of the ordinance is appreciated.

FINANCE DEPARTMENT FUNDS/ACCOUNT VERIFIED	
Acct. No.	<u>260.11250.22L1A.4XXXX</u>
Am	<u>22,254.89</u>
By: 	Date: <u>8/25/2022</u>

Introduced by:	Mayor
Date:	09/06/22
Hearing:	09/20/22
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-19-16**

**AN ORDINANCE APPROPRIATING FUNDS FROM THE BEAR CREEK FIRE  
SERVICE AREA OPERATING FUND BALANCE FOR THE COST OF REPAIRS TO A  
RESCUE PUMPER**

- WHEREAS,** a 2005 Freightliner Rescue Pumper (Asset Tag T08641) (“Rescue Pumper”), owned by the Kenai Peninsula Borough (“Borough”) and operated by the Bear Creek Fire Service Area (“BCFSA”), sustained mechanical damage on July 10, 2022 due to failure of the transfer case responsible for driving and fire pump engagement; and
- WHEREAS,** the Rescue Pumper is the primary structural apparatus for the BCFSA and was sent to Metco Alaska, LLC for an assessment of the damage; and
- WHEREAS,** an estimate for the repairs and replacement was submitted by Metco Alaska, LLC on August 8, 2022, and work was begun due to the urgent need to return the Rescue Pumper to service and since funding was available in the overall service area budget; and
- WHEREAS,** an emergency contract was awarded to Metco Alaska, LLC for repair and replacement pursuant to KP.B 5.28.290; and
- WHEREAS,** the total cost of repair and replacement is \$37,132.00, including parts, and labor for assessment and repair/replacement; and
- WHEREAS,** at its regular meeting of September 13, 2022, the Bear Creek Fire Service Area Board recommended enactment; and
- WHEREAS,** funding for this expense is available within the overall BCFSA budget but an ordinance is necessary to allow the money to be transferred from the operating fund balance to the appropriate account;

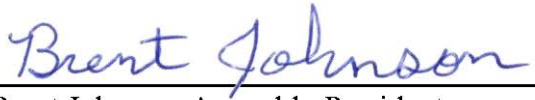
**NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:**

- SECTION 1.** That the amount of \$37,132.00 is appropriated from the Bear Creek Fire Service Area Fund fund balance to account 207.51210.00000.43720 for repairs to the BCFSA Rescue Pumper.

**SECTION 2.** That the appropriations made in this ordinance are project length in nature and as such do not lapse at the end of any particular fiscal year.

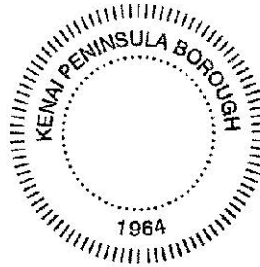
**SECTION 3.** That this ordinance shall be effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 20TH DAY OF SEPTEMBER, 2022.**

  
Brent Johnson, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk





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



# Kenai Peninsula Borough

## Bear Creek Fire Service Area

### MEMORANDUM

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

**THRU:** Charlie Pierce, Mayor   
John Hedges, Purchasing & Capital Projects Director 

**FROM:** Richard Brackin, Chief of Emergency Services   
Brandi Harbaugh, Finance Director 


**DATE:** August 25, 2022

**RE:** Ordinance 2022-19-16, Appropriating Funds from the Bear Creek Fire Service Area Operating Fund Balance for the Cost of Repairs to A Rescue Pumper (Mayor)

On Saturday July, 10, 2022, Bear Creek 118 the Rescue Pumper and the service area's primary structural firefighting apparatus, lost power while driving on the Seward Highway in response to a call. The engine was towed to Metco for a diagnostic review of necessary repairs. A full diagnosis of the damage has been completed and it was determined that the damage extended beyond the transfer case. The cost for replacement parts, labor and other associated charges is estimated to be \$37,132.00. The repair work was begun on an emergency basis under KPB 5.28.290 due to the urgent need to return the Rescue Pumper to service and since funding was available in the overall service area budget.

Repairs on the primary engine are currently underway and this ordinance will appropriate funds from the Bear Creek Operating Fund fund balance to cover the repair costs.

Your consideration of the ordinance is appreciated.

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	<u>207.27910</u>
Am	<u>132</u>
By: 	Date: <u>8/25/2022</u>

Kenai Peninsula Borough  
Office of the Borough Clerk

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**MEMORANDUM**

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

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

**DATE:** September 20, 2022

**RE:** Ordinance 2022-19-16: Appropriating Funds from the Bear Creek Fire Service Area Operating Fund Balance for the Cost of Repairs to a Rescue Pumper (Mayor)

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

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

**WHEREAS,** at its regular meeting of September 13, 2022, the Bear Creek Fire Service Area Board recommended enactment; and

Thank you.


# Kenai Peninsula Borough

## Planning Department

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### MEMORANDUM

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

**FROM:** Robert Ruffner, Planning Director 

**DATE:** August 23, 2022

**RE:** Right-Of-Way Vacation: Joe Luy Court & Bismarck Court Right-of-Way and Associated Utility Easement Vacations; KPB File 2022-117V

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In accordance with AS 29.40.140, no vacation of a Borough right-of-way and/or easement may be made without the consent of the Borough Assembly.

During their regularly scheduled meeting of August 22, 2022 the Kenai Peninsula Borough Planning Commission granted approval of the above proposed vacation by unanimous vote based on the means of evaluating public necessity established by KPB 20.65 (12-Yes, 2-Vacant). This petition is being sent to you for your consideration and action.

A draft copy of the unapproved minutes of the pertinent portion of the meeting and other related materials are attached.

August 22, 2022 Draft PC Minutes  
August 22, 2022 Meeting Packet Materials



**\*7. Minutes**

## a. August 8, 2022 Planning Commission meeting minutes.

Chair Brantley asked if anyone wished to speak to any of the items on the consent agenda. Hearing no one wishing to comment he asked Ms. Shirnberg to read into the record the consent agenda items.

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

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

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes - 12	Brantley, Fikes, Gillham, Hooper, Horton, Martin, Morgan, Slaughter, Staggs, Stutzer, Tautfest, Venuti
No - 0	

**AGENDA ITEM E. NEW BUSINESS**

Chair Brantley asked Ms. Shirnberg to read into the record the procedures for public hearings.

**ITEM E1 – RIGHT-OF-WAY VACATION  
JOE LUY COURT AND BISMARCK COURT RIGHT-OF-WAY AND  
ASSOCIATED UTILITY EASEMENT VACATIONS**

<b>KPB File No.</b>	2022-117V
<b>Planning Commission Meeting:</b>	August 22, 2022
<b>Applicant / Owner:</b>	Alcan Ventures Limited of Vernon, BC
<b>Surveyor:</b>	John Segesser / Segesser Surveys
<b>General Location:</b>	Citabria Street, Lower Salamatof Avenue, Salamatof
<b>Legal Description:</b>	Joe Luy Court and Bismarck Court, Salamatof Air Park Alcan Addition No. 2, Plat KN 2009-14, Township 6 North, Range 12 West, Section 1

Staff report given by Platting Specialist Julie Hindman.

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

**MOTION:** Commissioner Horton moved, seconded by Commissioner Slaughter, to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.70, subject to staff recommendations and compliance with borough code.

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

**MOTION PASSED BY UNANIMOUS VOTE:**

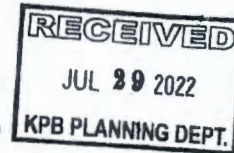
Yes - 12	Brantley, Fikes, Gillham, Hooper, Horton, Martin, Morgan, Slaughter, Staggs, Stutzer, Tautfest, Venuti
No - 0	

**ITEM E2 – CONDITIONAL USE PERMIT  
ANADROMOUS WATERS HABITAT PROTECTION DISTRICT**

<b>KPB File No.</b>	2022-34
<b>Planning Commission Meeting:</b>	August 22, 2022
<b>Applicant</b>	Castaway Cove Association
<b>Mailing Address</b>	1577 C Street, Anchorage, AK 99501



Kenai Peninsula Borough Planning Department  
144 North Binkley  
Soldotna, Alaska 99669-7599  
Toll free within the Borough 1-800-478-4441, extension 2200  
(907) 714-2200



**Petition to Vacate Public Right-of-Way/Easement/Platted Public Area**  
**Public Hearing Required**

Upon receipt of complete application with fees and all required attachments, a public hearing before the Planning Commission will be scheduled. The petition with all required information and attachments must be in the Planning Department at least 30 days prior to the preferred hearing date. By State Statute and Borough Code, the public hearing must be scheduled within 60 days of receipt of complete application.

- ☒ \$500 non-refundable fee to help defray costs of advertising public hearing.
- ☐ City Advisory Planning Commission. Copy of minutes at which this item was acted on, along with a copy of City Staff Report.
- ☒ Name of public right-of-way proposed to be vacated is dedicated by the plat of SHAMATOF AIR PARK HIGHWAY NO. 2 subdivision, filed as Plat No. 2009-14 in KENAI Recording District.
- ☐ Are there associated utility easements to be vacated? ☒ Yes ☐ No
- ☐ Are easements in use by any utility company? If so, which company NONE
- ☐ Easement for public road or right-of-way as set out in (specify type of document) \_\_\_\_\_ as recorded in Book \_\_\_\_\_ Page \_\_\_\_\_ of the \_\_\_\_\_ Recording District. (Copy of recorded document must be submitted with petition.)
- ☒ Submit three copies of plat or map showing area proposed to be vacated. Must not exceed 11x17 inches in size. In the case of public right-of-way, the submittal must include a sketch showing which parcels the vacated area will be attached to. Proposed alternative dedication is to be shown and labeled on the sketch.
- Has right-of-way been fully or partially constructed? ☐ Yes ☒ No
- Is right-of-way used by vehicles / pedestrians / other? ☐ Yes ☒ No
- Is alternative right-of-way being provided? ☐ Yes ☒ No

The petitioner must provide reasonable justification for the vacation. Reason for vacating:

OWNER IS RESUBDIVIDING THE PROPERTY TO ELIMINATE THE  
NUMBER OF LOTS AND THE CUL DE SACS

The petition must be signed (written signature) by owners of the majority of land fronting the right-of-way, easement, or platted public area proposed to be vacated. Each petitioner must include address and legal description of his/her property.

Submitted By:

Name: SECESSER SURVEYS  
Address: 30485 ROGLAND ST  
SOLDOTNA AK 99669

Signature as:

☐ Petitioner ☒ Representative

Phone 907 262 3909

Petitioners:

Signature Matthias Gohl  
Name Matthias Gohl  
Address ALCAN Ventures Ltd.  
8090 Jackpine Road, Vernon, BC V1B 3M9  
Canada

Owner of \_\_\_\_\_

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Address \_\_\_\_\_

Owner of \_\_\_\_\_

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Address \_\_\_\_\_

Owner of \_\_\_\_\_

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Address \_\_\_\_\_

Owner of \_\_\_\_\_

## **E. NEW BUSINESS**

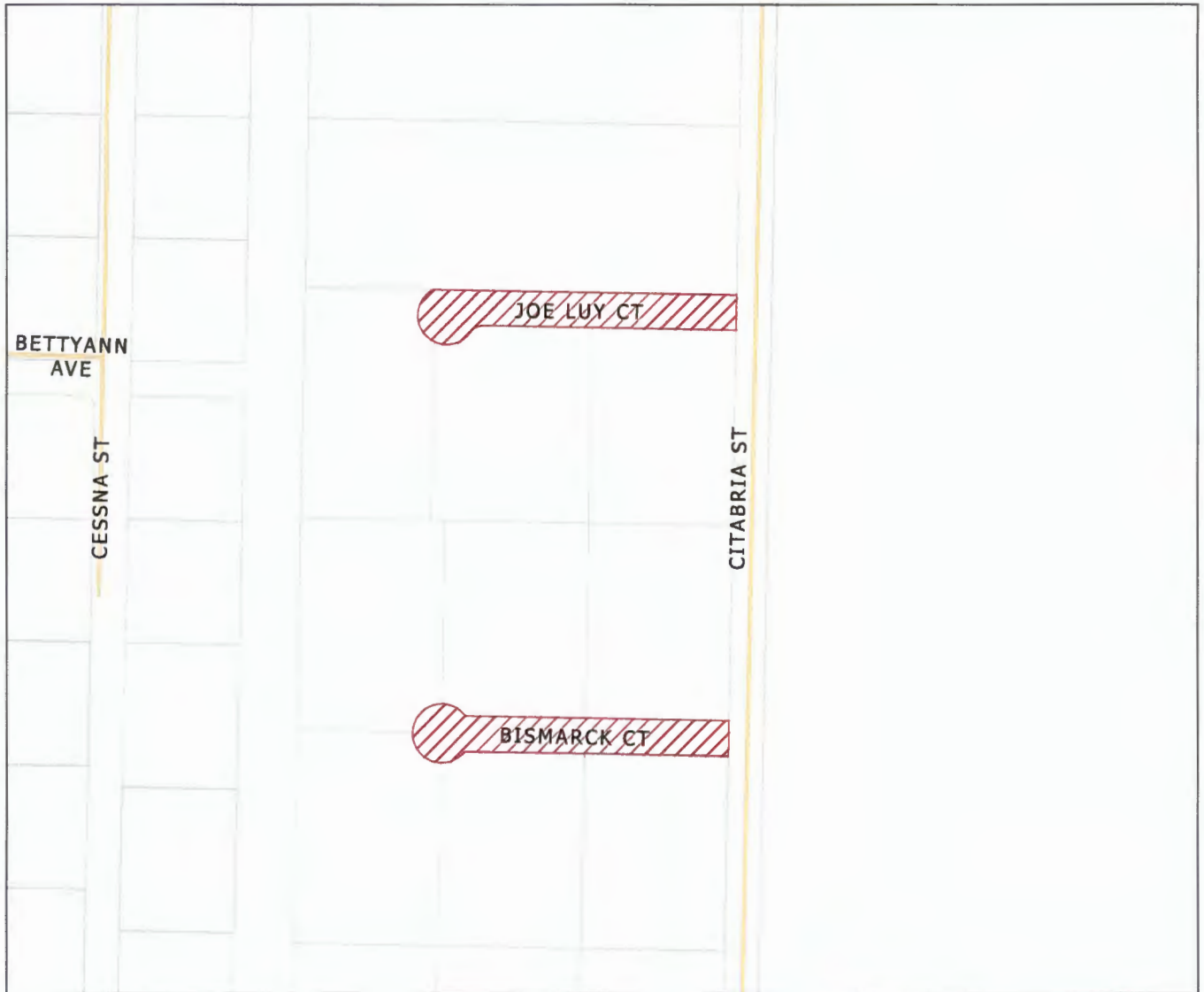
- 1. Right-of-Way Vacation; KPB File 2022-117V  
Segesser Surveys /Alcan Ventures Limited of Vernon, BC  
Request: Vacate Joe Luy Court & Bismarck Court  
Salamatof Area**





# Kenai Peninsula Borough Planning Department

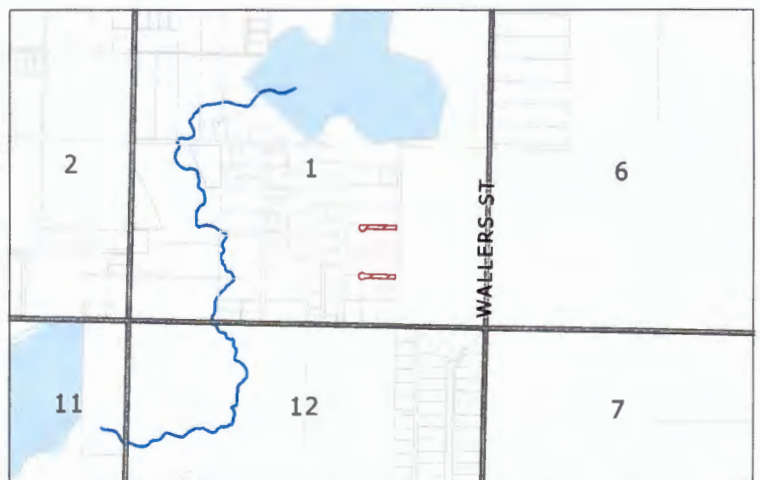
## Vicinity Map



KPB File 2022-117V  
T 06N R 12W SEC 01  
Salamatof

7/31/2022

0 250 500 Feet



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



**Aerial View**



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

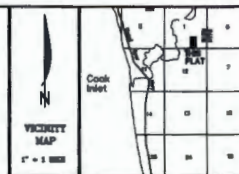


- ⑦ 3 1/4" ALUM. CAP MOMENT RES-2 1900 POUND
- 5/8" RESIN POUND
- 5/8" RESIN 1/2" PLASTIC CAP LOOSE SET
- ( ) RECORD BATHY PLAT 200S-14 STD

[illegible]

I hereby certify that I am properly registered and bonded to practice law serving in the State of Alaska. The plot represents a survey made by me or under my direct supervision, the measurements shown herein actually made as described, and all dimensions and other details are correct.

State \_\_\_\_\_

[illegible]

I HEREBY CERTIFY THAT I AM THE OWNER OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON AND THAT I HEREBY ADOPT THIS PLAN OF SUBDIVISION AND BY MY FREE CONSENT DEDICATE ALL RIGHTS-OF-WAY AND PUBLIC AREAS TO PUBLIC USE AND GRANT ALL EASEMENTS TO THE USE SHOWN.

LETTERS WOLF, PRESIDENT  
ALCAN VENTURES LIMITED  
8080 JACKSON ROAD  
VICTORIA, BC V8B 3A9

FOR \_\_\_\_\_  
ACKNOWLEDGES BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_

NOTARY PUBLIC FOR ALASKA  
BY COMMISSION EXPIRES \_\_\_\_\_

THIS PLAN WAS APPROVED BY THE HON. PENNSYLVANIA HONORARY PLANNING COMMISSION AT THE MEETING OF

NONI PENNELLA BORGHI  
SILVANO GEMELLI

**Salamatof Air Pari  
Alcan 2023 Replat**

Located within the 91/2 (31/4) Section 1, T8N, R10W, S4, Knox Township, Berks, Pa.

Containing \$4,540 Ac.	
<b>Surveyor</b> <b>Sagester Surveys</b> 20485 Redland St. Buickland, AZ 85808 (907) 585-3808	<b>Owner</b> Stone Pasture Limited 8880 Judahway Road Verano, CA 94982
JOB NO. 22779 SURVEYED N/A FIELD BOOKS N/A	DATES 7-26-22 SCALE 1"=100' SHEET 1 of 1

AGENDA ITEM E. NEW BUSINESS

ITEM 1 – RIGHT-OF-WAY VACATION  
JOE LUY COURT AND BISMARCK COURT RIGHT-OF-WAY AND  
ASSOCIATED UTILITY EASEMENT VACATIONS

KPB File No.	2022-117V
Planning Commission Meeting:	August 22, 2022
Applicant / Owner:	Alcan Ventures Limited of Vernon, BC
Surveyor:	John Segesser / Segesser Surveys
General Location:	Citabria Street, Lower Salamatof Avenue, Salamatof
Legal Description:	Joe Luy Court and Bismarck Court, Salamatof Air Park Alcan Addition No. 2, Plat KN 2009-14, Township 6 North, Range 12 West, Section 1

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STAFF REPORT

**Specific Request / Purpose as stated in the petition:** Owner is resubdividing the property to eliminate the number of lots and the cul-de-sacs.

**Notification:** Public notice appeared in the August 11, 2022 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the August 18, 2022 issue of the Peninsula Clarion as part of the Commission's tentative agenda.

The public notice was posted on the Planning Commission bulletin board at the Kenai Peninsula Borough George A. Navarre Administration building. Additional notices were mailed to the following with the request to be posted for public viewing.

Library of Nikiski

Post Office of Nikiski

Fifteen certified mailings were sent to owners of property within 600 feet of the proposed vacation. Eight receipts had been returned when the staff report was prepared. There were no required public hearing notices to be sent by regular mail as certifies were sent to those within 600 feet instead of the required 300 feet.

Fifteen public hearing notices were emailed to agencies and interested parties as shown below;

State of Alaska Dept. of Fish and Game  
State of Alaska DNR  
State of Alaska DOT  
State of Alaska DNR Forestry  
Emergency Services of Nikiski

Nikiski Community Council  
Alaska Communication Systems (ACS)  
ENSTAR Natural Gas  
General Communications Inc, (GCI)  
Homer Electric Association (HEA)

**Legal Access (existing and proposed):** The subject parcels are located within the Salamatof Air Park and have a tract abutting them to the west that contains an airstrip. There are multiple dedications and easements in the area that provide access but only certain portions are constructed. The access route is located from the corner of state maintained Miller Loop Road where the right-of-way changes to a northern direction and the access from KPB maintained roads are south of the state right-of-way. Various rights-of-way are used to connect to Lower Salamatof Avenue that connects to Citabria Street. Citabria Street is a 60 foot wide, borough maintained right-of-way that was dedicated by Salamatof Air Park, Plat KN 98-75. This right-of-way runs along the eastern boundary of the affected lots and will continue to provide access to the new lot configurations.

Salamatof Air Park Alcan Addition No. 2, Plat KN 2009-14, dedicated the two subject vacations, Joe Luy Court and Bismarck Court. These are both 60 foot wide dedicated rights-of-way that end in cul-de-sacs. They are currently



not constructed. The owners are proposing to combine lots in a manner that they will have frontage along Citabria Street or Lower Salamatof Avenue. The lots will also abut Tract A for access to the airstrip.

The proposed design will no longer require the cul-de-sacs for access to lots. Due to the location of the airstrip the block lengths do not comply but as the rights-of-way proposed for vacation are cul-de-sacs the vacation of them will not improve or worsen block lengths as they are not through rights-of-way.

KPB Roads Dept. comments	Out of Jurisdiction: No  Roads Director: Painter, Jed Comments: No comments
SOA DOT comments	

**Site Investigation:** The proposed vacations do not contain any low wet areas or steep terrain. The remaining access appears to be free from steep terrain and low wet areas and is currently constructed and borough maintained.

KPB River Center review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
State of Alaska Fish and Game	No objections

**Staff Analysis:** Salamatof Air Park, Plat KN 98-75, created Tract C as well as Tract A that contains the airstrip. Citabria Street was also dedicated as a 60 foot wide right-of-way and the North 33 feet of Lower Salamatof Avenue. Tract C was replatted by Salamatof Air Park Alcan Addition No. 2, Plat KN 2009-14. That plat created twelve lots and dedicated Joe Luy Court and Bismarck Court to provide required access to some of the lots. The owners are proposing to replat the twelve lots into five lots that will have access from Citabria Street and Lower Salamatof Avenue.

The rights-of-way are not constructed. The only lot that is not part of the replat that fronts along one of the proposed vacations is Lot 17 of Salamatof Air Park, Plat KN 98-75. Lot 17 abuts the airstrip and Citabria Street. Access appears to be constructed within the lot from the dedicated right-of-way and to the airstrip.

Salamatof Air Park Alcan Addition No. 2, Plat KN 2009-14, granted utility easements along the front 10 feet adjacent to dedicated rights-of-way and 20 feet within 5 feet of side lot lines. Per the application, the owners wish to vacate the associated utility easements. **Staff recommends** if the vacations are approved the utility easements being vacated be depicted and noted. This plat is proposing to dedicate a new 10 foot utility easement along the northern boundary and carry over the easements as granted by the parent plat. **Staff recommends** easement depictions be updated along Citabria Street to reflect the 20 foot easements centered 5 feet on the former side lots lines as the petition did not include those to be vacated.

#### 20.65.050 – Action on vacation application

- D. The planning commission shall consider the merits of each vacation request and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:
1. The right-of-way or public easement to be vacated is being used;  
**Staff comments:** The rights-of-way are not constructed
  2. A road is impossible or impractical to construct, and alternative access has been provided;  
**Staff comments:** The replat will result in the rights-of-way not being needed for access, existing alternate access is available.
  3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;  
**Staff comments:** This is abutting an airstrip and no additional rights-of-way are needed with the proposed design.
  4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;  
**Staff comments:** The rights-of-way are cul-de-sacs that do not provide access to public areas
  5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;  
**Staff comments:** As the rights-of-way are cul-de-sacs that are to be permanently closed, the vacations do not limit opportunities for interconnectivity.
  6. Other public access, other than general road use, exist or are feasible for the right-of-way;  
**Staff comments:** Provide access to private parcels that will be combined.
  7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a utility, shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a utility easement be granted in place of the right-of-way.  
**Staff comments:** A new easement is proposed and easements will remain along Citabria Street. Requests from providers will be reviewed.
  8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.  
**Staff comments:** The rights-of-way were created to grant access to lots that will no longer exist due to replat.

A KPB Planning Commission decision denying a vacation application is final. A KPB Planning Commission decision to approve the vacation application is subject to consent or veto by the KPB Assembly, or City Council if located within City boundaries. The KPB Assembly, or City Council must hear the vacation within thirty days of the Planning Commission decision.

The Assembly will hear the vacation at their scheduled September 6, 2022 meeting.

If approved, Salamatof Air Park Alcan 2022 Replat will finalize the proposed right of way vacations. The Plat Committee is scheduled to review the plat on August 22, 2022.

**KPB department / agency review:**

Planner	Reviewer: Raidmae, Ryan
---------	-------------------------

	There are not any Local Option Zoning District issues with this proposed plat.  Material Site Comments: There are not any material site issues with this proposed plat.
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Addressing	Reviewer: Haws, Derek Affected Addresses: None  Existing Street Names are Correct: No  List of Correct Street Names: CESSNA ST JOE LUY CT LOWER SALAMATOF AVE CITABRIA ST  Existing Street Name Corrections Needed: BISMARCK CT should be BISMARCK CT  All New Street Names are Approved: No  List of Approved Street Names:  List of Street Names Denied:  Comments: BISMARCK CT should be BISMARCK CT. JOE LUY CT and BISMARCK CT will be deleted.
Assessing	Reviewer: Windsor, Heather Comments: No comment

**Utility provider review:**

HEA	No comment
ENSTAR	No comment or recommendations
ACS	
GCI	Approved as shown

**RECOMMENDATION:**

Based on consideration of the merits as per KPB 20.65.050(D) as outlined by Staff comments, Staff recommends APPROVAL as petitioned, subject to:

1. Consent by KPB Assembly.
2. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
3. Grant utility easements requested by the utility providers.
4. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).

---

**KPB 20.65.050 – Action on vacation application**



- H. A planning commission decision to approve a vacation is not effective without the consent of the city council, if the vacated area to be vacated is within a city, or by the assembly in all other cases. The council or assembly shall have 30 days from the date of the planning commission approval to either consent to or veto the vacation. Notice of veto of the vacation shall be immediately given to the planning commission. Failure to act on the vacation within 30 days shall be considered to be consent to the vacation. This provision does not apply to alterations of utility easements under KPB 20.65.070 which do not require the consent of the assembly or city council unless city code specifically provides otherwise.
- I. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, where applicable, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent.
- J. A planning commission decision denying a vacation application is final. No reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.
- K. An appeal of the planning commission, city council or assembly vacation action under this chapter must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.

The 2019 Kenai Peninsula Borough Comprehensive Plan adopted November, 2019 by Ordinance No. 2019-25. The relevant objectives are listed.

*Goal 3. Preserve and improve quality of life on the Kenai Peninsula Borough through increased access to local and regional facilities, activities, programs and services.*

- *Focus Area: Energy and Utilities*
  - o *Objective A - Encourage coordination or residential, commercial, and industrial development with extension of utilities and other infrastructure.*
    - *Strategy 1. Near – Term: Maintain existing easements (especially section line easements) in addition to establishing adequate utility rights of way or easements to serve existing and future utility needs.*
    - *Strategy 2. Near – Term: Maintain regular contact with utility operators to coordinate and review utility easement requests that are part of subdivision plat approval.*
    - *Strategy 3. Near – Term: Identify potential utility routes on Borough lands.*
- *Housing*
  - o *Objective D. Encourage efficient use of land, infrastructure and services outside incorporated cities by prioritizing future growth in the most suitable areas.*
    - *Strategy 1. Near – Term: Collaborate with the AK Department of Transportation, incorporated cities within the borough, utility providers, other agencies overseeing local services, and existing communities located adjacent to the undeveloped areas that are appropriate for future growth, to align plans for future expansion of services to serve future residential development and manage growth.*

*Goal 4. Improve access to, from and connectivity within the Kenai Peninsula Borough*

- *Focus Area: Transportation*
  - o *Objective B. Ensure new roads are developed in alignment with existing and planned growth and development.*
    - *Strategy 2. Near – Term: Establish subdivision codes that dictate road construction standards to accommodate future interconnectivity and/or public safety.*
    - *Strategy 3. Near – Term: Identify areas of anticipated growth to determine future access needs.*

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END OF STAFF REPORT

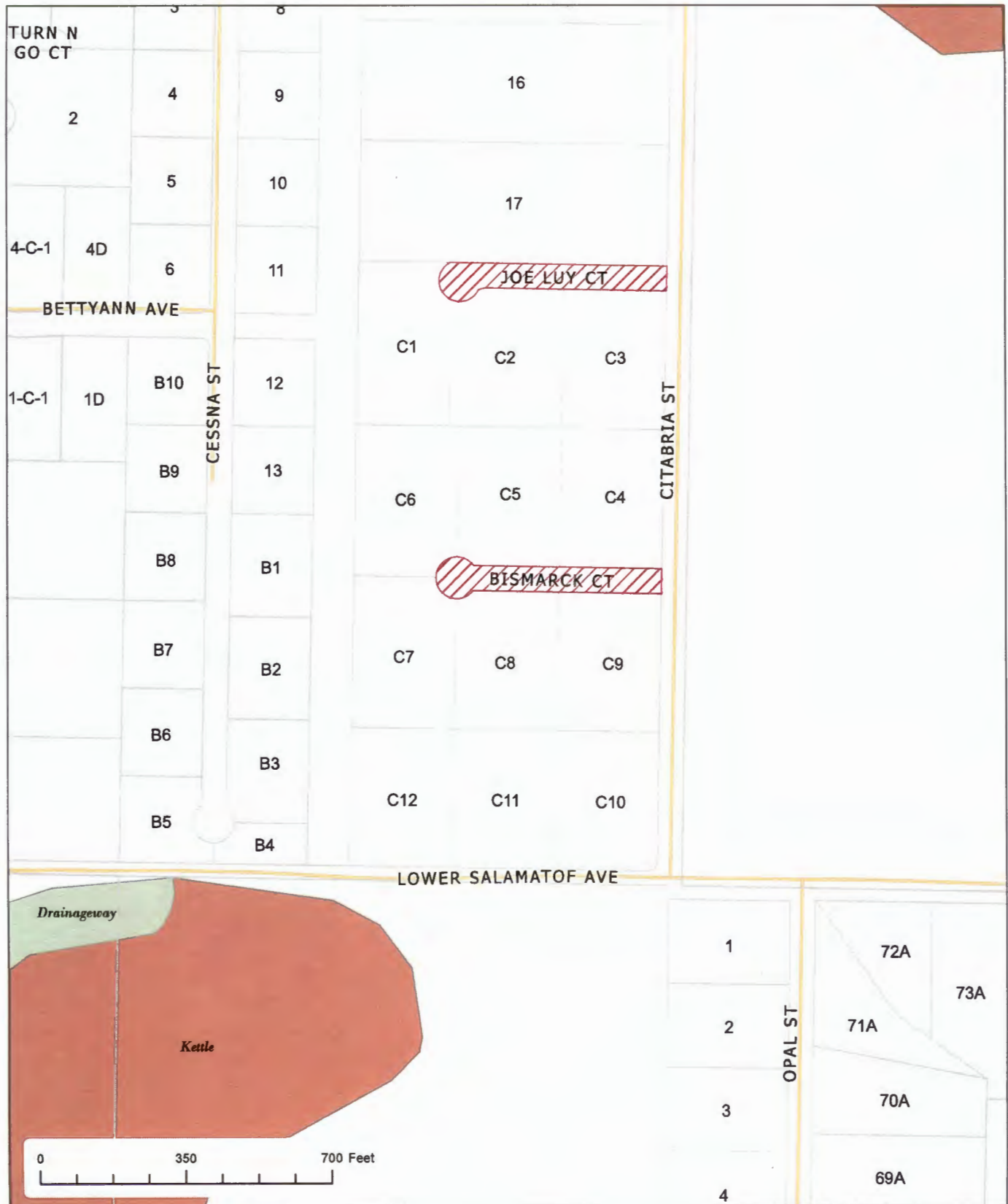
Page 5 of 5





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





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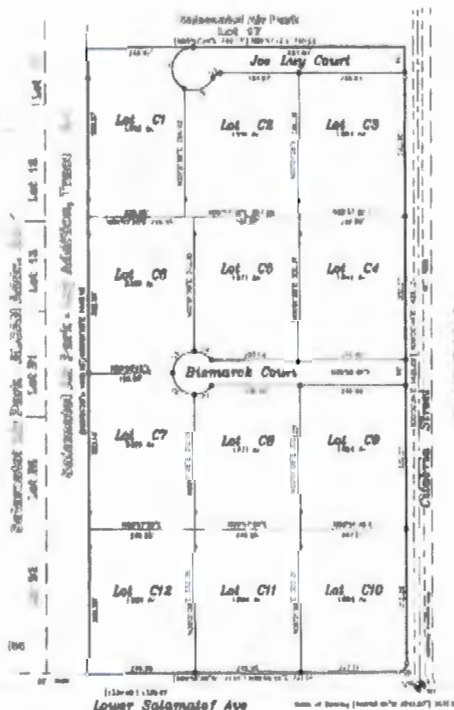
The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.



NOTES

- 1) Easements, easements of way, and other rights of way are shown on this plan as they exist on the date of the survey.
- 2) Easements, easements of way, and other rights of way are shown on this plan as they exist on the date of the survey.
- 3) Easements, easements of way, and other rights of way are shown on this plan as they exist on the date of the survey.
- 4) Easements, easements of way, and other rights of way are shown on this plan as they exist on the date of the survey.
- 5) Easements, easements of way, and other rights of way are shown on this plan as they exist on the date of the survey.
- 6) Easements, easements of way, and other rights of way are shown on this plan as they exist on the date of the survey.
- 7) Easements, easements of way, and other rights of way are shown on this plan as they exist on the date of the survey.
- 8) Easements, easements of way, and other rights of way are shown on this plan as they exist on the date of the survey.
- 9) Easements, easements of way, and other rights of way are shown on this plan as they exist on the date of the survey.
- 10) Easements, easements of way, and other rights of way are shown on this plan as they exist on the date of the survey.

Surveyed by: [Signature] Date: 10/1/99



Lower Salsamaf Ave

Scale of Survey: 1 inch = 100 feet

LEGEND

- 1. 1/4" Iron Rod (Standard) (Found)
- 2. 1/4" Iron Rod (Found)
- 3. 1/4" Iron Rod (Found)
- 4. 1/4" Iron Rod (Found)
- 5. 1/4" Iron Rod (Found)
- 6. 1/4" Iron Rod (Found)
- 7. 1/4" Iron Rod (Found)
- 8. 1/4" Iron Rod (Found)
- 9. 1/4" Iron Rod (Found)
- 10. 1/4" Iron Rod (Found)

Lot	Area	Owner
C1	1.000	Joe Lay
C2	1.000	Joe Lay
C3	1.000	Joe Lay
C4	1.000	Joe Lay
C5	1.000	Joe Lay
C6	1.000	Joe Lay
C7	1.000	Joe Lay
C8	1.000	Joe Lay
C9	1.000	Joe Lay
C10	1.000	Joe Lay



CERTIFICATE OF OWNERSHIP and DEDICATION

I, the undersigned, being the owner of the real property described in the foregoing plat, do hereby certify that the same is dedicated to the public use and shall be subject to the use thereof.

Witness my hand and seal this 1st day of October, 1999.

NOTARY'S ACKNOWLEDGMENT

I, the undersigned, being the owner of the real property described in the foregoing plat, do hereby certify that the same is dedicated to the public use and shall be subject to the use thereof.

Witness my hand and seal this 1st day of October, 1999.

Notary Public for the State of Alaska

My Commission Expires: 10/1/2001

My Office Address: [Address]

My Home Address: [Address]

My Telephone: [Number]

My E-mail Address: [Email]

My Signature: [Signature]

My Seal: [Seal]

My Date: 10/1/99

My Time: 10:00 AM

My Location: [Location]

My Remarks: [Remarks]

My Signature: [Signature]

My Seal: [Seal]

My Date: 10/1/99

My Time: 10:00 AM

My Location: [Location]

My Remarks: [Remarks]

My Signature: [Signature]

My Seal: [Seal]

My Date: 10/1/99

My Time: 10:00 AM

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My Signature: [Signature]

My Seal: [Seal]

My Date: 10/1/99

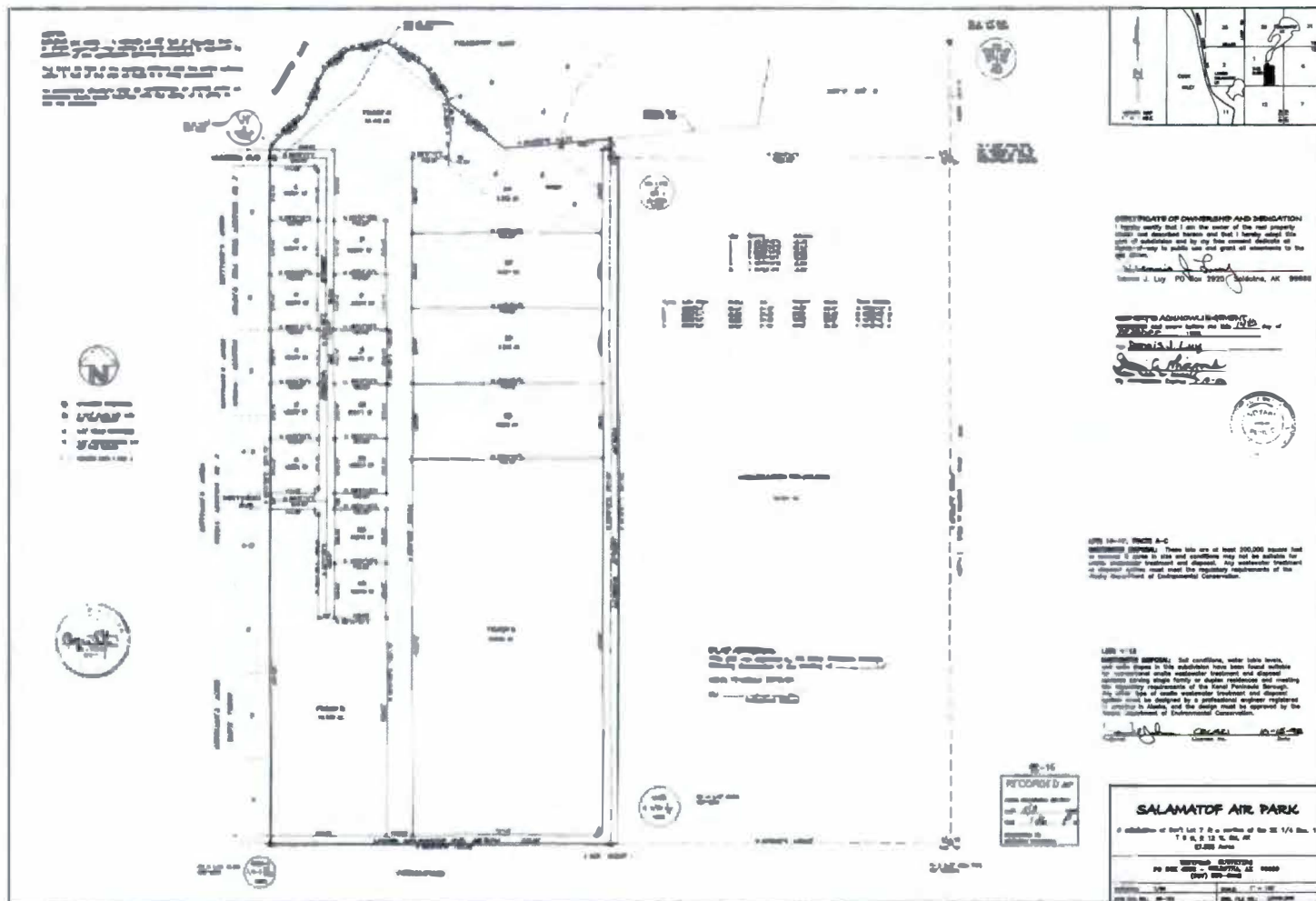
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My Remarks: [Remarks]

My Signature: [Signature]

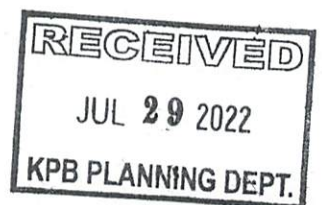
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Kenai Peninsula Borough Planning Department  
144 North Binkley  
Soldotna, Alaska 99669-7599  
Toll free within the Borough 1-800-478-4441, extension 2200  
(907) 714-2200



**Petition to Vacate Public Right-of-Way/Easement/Platted Public Area**  
**Public Hearing Required**

Upon receipt of complete application with fees and all required attachments, a public hearing before the Planning Commission will be scheduled. The petition with all required information and attachments must be in the Planning Department at least 30 days prior to the preferred hearing date. By State Statute and Borough Code, the public hearing must be scheduled within 60 days of receipt of complete application.

- ☒ \$500 non-refundable fee to help defray costs of advertising public hearing.
- ☐ City Advisory Planning Commission. Copy of minutes at which this item was acted on, along with a copy of City Staff Report.
- ☒ Name of public right-of-way proposed to be vacated is dedicated by the plat of SALAMATOF AIR PARK ALCTN ADDN No 2 Subdivision, filed as Plat No. 2009-14 in KENAI Recording District.
- ☐ Are there associated utility easements to be vacated? ☒ Yes ☐ No
- ☐ Are easements in use by any utility company? If so, which company NONE
- ☐ Easement for public road or right-of-way as set out in (specify type of document) \_\_\_\_\_ as recorded in Book \_\_\_\_\_ Page \_\_\_\_\_ of the \_\_\_\_\_ Recording District. (Copy of recorded document must be submitted with petition.)
- ☒ Submit three copies of plat or map showing area proposed to be vacated. Must not exceed 11x17 inches in size. In the case of public right-of-way, the submittal must include a sketch showing which parcels the vacated area will be attached to. Proposed alternative dedication is to be shown and labeled on the sketch.
- Has right-of-way been fully or partially constructed? ☐ Yes ☒ No
- Is right-of-way used by vehicles / pedestrians / other? ☐ Yes ☒ No
- Is alternative right-of-way being provided? ☐ Yes ☒ No

The petitioner must provide reasonable justification for the vacation. Reason for vacating:

OWNER IS RESUBDIVIDING THE PROPERTY TO ELIMINATE THE  
NUMBER OF LOTS AND THE CUL DE SACS

The petition must be signed (written signature) by owners of the majority of land fronting the right-of-way, easement, or platted public area proposed to be vacated. Each petitioner must include address and legal description of his/her property.

Submitted By:

Name: SEGESSER SURVEYS  
Address 30485 ROSLAND ST  
SOLDOTNA AK 99669

Signature as:  
Petitioner

☒ Representative

Phone 907 262 3909

Petitioners:

Signature [Signature]  
Name Matthias Gohl  
Address ALCAN Ventures Ltd.  
8090 Jackpine Road, Vernon, BC V1B 3M9  
Canada

Owner of \_\_\_\_\_

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Address \_\_\_\_\_

Owner of \_\_\_\_\_

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Address \_\_\_\_\_

Owner of \_\_\_\_\_

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Address \_\_\_\_\_

Owner of \_\_\_\_\_

# Kenai Peninsula Borough

## Legal Department

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### MEMORANDUM

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

**FROM:** Sean Kelley, Borough Attorney

**DATE:** August 30, 2022

**SUBJECT:** Vacancy in the Office of Mayor – Transition and Succession Process

---

The below provides a brief analysis, followed by recommendations, concerning the potential process and succession timeline when there is a vacancy in the office of mayor for the Kenai Peninsula Borough ("KPB" or "borough").

#### **Background**

On August 26, 2022, Mayor Charlie Pierce resigned his position as KPB Mayor. The effective date of the resignation is close-of-business on September 30, 2022.<sup>1</sup>

#### **Declaring a Vacancy and Calling a Special Election**

This is a unique situation. On several of the issues discussed below there is either no controlling law or ambiguity in the law and reasonable minds may disagree on how to proceed.

During the September 6, 2022, regularly scheduled Assembly meeting, the KPB Assembly ("Assembly") will need to accept the resignation of Mayor Pierce, and by two-thirds concurring vote, declare the office of mayor vacant.<sup>2</sup>

Alaska Statutes (AS) 29.20.280(b) provides:

A vacancy in the office of mayor occurring six months before a regular election shall be filled by the governing body. The person appointed serves until the next regular election when a successor is elected to serve the balance of the term. If a member of the governing body is appointed mayor, the member shall resign the seat on the governing body. If a vacancy occurs more than six months before a regular election, the governing body shall call a special election to fill the unexpired term.

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<sup>1</sup> See, Attachment 1, Mayor Pierce's resignation letter.

<sup>2</sup> See, AS 29.20.280 (Attachment 2)

While the vacancy will likely occur within six months of the regular local borough election on October 4, 2022, it would not be feasible to include the office of mayor in the upcoming local election.<sup>3</sup> The next regular election for Borough Mayor is October 2023.

Should the Assembly reasonably interpret the phrase “the next regular election” in AS 29.20.280(b) to mean the next regular election that complies with fixed candidacy filing periods and in a manner that allows for mayoral candidates to be included on the regular election ballot, then the vacancy will occur more than six months before the next regular election.

Accordingly, the KPB Legal Department recommends that the Assembly call an areawide special election wherein the registered voters of the borough will elect a mayor to fill the unexpired term of the office of mayor. The qualifications for the mayor elected by special election are the same as for a mayor who runs as a candidate in a full-term general election. The candidate must be: (1) a qualified voter of the State of Alaska; and (2) a resident of the Kenai Peninsula Borough for one year immediately preceding filing for office.

Per KPB 4.120.010, the special election may be conducted by mail.

### **Interim Mayor – Assembly Appointment**

Neither State law nor Borough code provide overt direction on who should serve as mayor during the interim period between a resignation and a special election. Assuming a vacancy is declared, a reasonable interpretation of AS 29.20.280 is that the Assembly should appoint a mayor to serve until the mayor elected by special election takes office (The appointed mayor is referred to herein as the “Interim Mayor” for convenience only).

Despite some arguable ambiguity in applicable State law and Borough Code, it would be reasonable for the Assembly to decide to appoint an Interim Mayor until a special election can be held. It would also be reasonable for the Assembly to read AS 29.20.260 (Executive Absence), AS 29.20.280 (Vacancy in the office of mayor) and KPB Chapter 2.04 together, and approve the designated administrative officer to serve in as the temporary chief executive until a special election is held and the elected mayor takes office to fill the unexpired term. Functionally, either route leads to a similar result in that if the will of the Assembly is for the designated administrative officer to serve in the role of “Interim Mayor” then that can be accomplished via Assembly appointment (assuming the individual accepts the appointment).

---

<sup>3</sup> Mayor Pierce's term expires October 2023. Candidacy filing periods have closed and ballots are currently printed for the upcoming October 4, 2022 election.

### Appointment

The Assembly may appoint one of its members, but the member would need to accept the appointment and resign her/his assembly seat.<sup>4</sup> If a borough employee is appointed to temporarily serve as Interim Mayor, the employee would not need to resign her/his employment position. Neither State law nor Borough code prohibits such dual service. In fact, AS 29.20.400(b) expressly provides that a mayor, with consent of the governing body, may serve as the head of one or more departments.

The appointee should have the qualifications to serve as borough mayor under state law and borough code. Beyond qualifications to serve (registered voter, borough resident), neither state law nor borough code provide additional mayoral appointment criteria or requirements. Borough code does not outline any additional appointment procedures beyond what is set forth under AS 29.20.280.<sup>5</sup>

The appointment of an Interim Mayor is a discretionary decision of the governing body. Applicable law does not provide a set time frame or deadline for the appointment decision. Applicable law does not mandate that there be application period prior to appointment. Applicable law does not set forth any requirements for how the appointment decision must be made. Finally, applicable law does not establish any limitations on the powers of the appointed mayor.

### Designated Administrative Officer

In the event the Assembly has not appointed an Interim Mayor by September 30, 2022, and pursuant to the Designation of Administrative Officer approved by the Assembly on August 3, 2021, it is currently anticipated that the KPB Finance Director, Brandi Harbaugh, would serve as the alternate designated administrative officer.<sup>6</sup>

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<sup>4</sup> See, AS 29.20.280(b).

<sup>5</sup> See, KPB 2.04.080.

<sup>6</sup> See, KPB Legislative File #3356 (Attachment 3). In August 2021, the Assembly approved Chief of Staff Aaron Rhoades as the designated administrative official with KPB Finance Director, Brandi Harbaugh, as the approved alternative. This approval will need to be updated moving forward.

**KPB Chief Executive: now through the October 3, 2023 regular election\***

**\*Anticipated Timeline\***

August 26 through September 30, 2022:

Mayor Pierce will continue to serve as the KPB's chief executive. Per Mayor Pierce's resignation letter the resignation is effective close-of-business on September 30th. It is further anticipated that Chief of Staff Rhoades will serve through Mayor Pierce's last day in office.

September 30, 2022 through special election date

Assembly appointed "Interim Mayor" serves temporarily in role as chief executive for the Kenai Peninsula Borough until a new mayor takes office following an areawide special election.

Special election certification through October 3, 2023 regular election:

Mayor elected during special election will fill the unexpired term of the office of Borough mayor.

October 3, 2023 regular election:

A mayor will be elected during the regular election to serve a full three-year term.

**Recommendations**

**The Assembly should:**

- 1. Accept Mayor Pierce's resignation and, by two-thirds vote, declare a vacancy in the office of mayor and call a special election to fill the unexpired term. The declared vacancy would be effective close-of-business September 30, 2022.**
- 2. Appoint an "Interim Mayor" to serve until the mayor elected during the special election takes office.**
  - a. The effective date of the appointment should coincide with the effective date of the resignation/vacancy.**
  - b. Deliberations concerning individuals and qualifications for appointment may be discussed in executive session so long as the appointment decision is made publicly.**





## Office of the Mayor

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2130 • (907) 714-2396 Fax

Charlie Pierce  
Borough Mayor

August 26, 2022

Brent Johnson  
Assembly President  
Kenai Peninsula Borough  
144 N. Binkley Street  
Soldotna, Alaska 99669

Re: *Letter of Resignation*

Dear Mr. Johnson:

I am writing to tender my resignation as Mayor of the Kenai Peninsula Borough. This letter is not intended to become effective until 5:00 PM on Friday September 30, 2022.

As you know, I am currently in the midst of a gubernatorial campaign. Given the results of the primary election, it is clear that I cannot simultaneously discharge the duties of this office and run a competitive campaign for Governor. So, I have decided to resign in order to campaign full time.

It has been an honor and a privilege to serve as Mayor, and I look forward to hopefully continuing that service as Alaska's next Governor.

Sincerely,

Mayor Charlie Pierce  
Kenai Peninsula Borough

Cc: Johni Blankenship, Borough Clerk  
Sean Kelley, Borough Attorney

AS § 29.20.280

**Sec. 29.20.280. Vacancy in the office of mayor.**

(a) The governing body shall, by two-thirds concurring vote, declare the office of mayor vacant only when the person elected

(1) fails to qualify or take office within 30 days after election or appointment;

(2) unless excused by the governing body, is physically absent for 90 consecutive days;

(3) resigns and the resignation is accepted;

(4) is physically or mentally unable to perform the duties of office;

(5) is convicted of a felony or of an offense involving a violation of the oath of office;

(6) is convicted of a felony or misdemeanor described in AS 15.56;

(7) is convicted of a violation of AS 15.13;

(8) no longer physically resides in the municipality; or

(9) if a member of the governing body in a second class city, misses three consecutive regular meetings and is not excused.

(b) A vacancy in the office of mayor occurring six months before a regular election shall be filled by the governing body. The person appointed serves until the next regular election when a successor is elected to serve the balance of the term. If a member of the governing body is appointed mayor, the member shall resign the seat on the governing body. If a vacancy occurs more than six months before a regular election, the governing body shall call a special election to fill the unexpired term.


(c) Notwithstanding (b) of this section, a vacancy in the office of mayor of a second class city shall be filled by and from the council. A mayor appointed under this subsection serves the balance of the term to which appointed, except the mayor may serve only while a member of the council.

Kenai Peninsula Borough  
Office of the Borough Mayor

---

**MEMORANDUM**

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

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

**DATE:** August 3, 2021

**RE:** Designation of Administrative Officer

---

Pursuant to AS 29.20.260 and KPB 2.04.030, I am designating Aaron Rhoades, Chief of Staff, as the administrative officer to exercise the powers and duties of the Borough Mayor at such times as I may be absent or incapacitated and unable to discharge the duties of my office.

Brandi Harbaugh, Director of Finance, will continue be the alternate administrative officer to exercise the powers and duties of the Borough Mayor at such times when both Aaron Rhoades and I are absent or incapacitated and unable to discharge the duties of my office.

These designations are submitted for approval by the Assembly.

Thank you




# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

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

**DATE:** September 6, 2022

**SUBJECT:** **LAYDOWN** Motion to Appoint Mike Navarre as Interim Mayor (Cox)

---

I will make a motion to appoint Mike Navarre as Interim Mayor during our Regular Assembly meeting tonight. I apologize for the short notice with a LAYDOWN motion, but time is of the essence.

### Reasoning

After reading through Mr. Kelley's memo regarding the vacancy in the office of Mayor and the transition and succession process to follow, I began to think about the following questions.

1. How can the Assembly help to make this process as seamless as possible for our Borough employees and residents?
2. Who could reasonably accomplish the tasks of the Mayor, especially when the FY24 budget is right around the corner?
3. Should the Assembly consider appointing someone who would also be planning to run for Mayor during the special election?

As I was pondering these questions, residents of the Kenai Peninsula started calling me with suggestions of who might be able to successfully take on this important role. The name brought up most was Mike Navarre. I contacted Mr. Navarre to see if this was even something he would consider. Mr. Navarre stated that he would be willing to step in as an Interim Mayor, but would have no interest in running for Mayor during the special election.

I believe Mike Navarre to be our best option to appoint as Interim Mayor. The following reasons are how I came to this conclusion.

1. The Assembly can help to make this process as seamless as possible for our Borough employees and residents by appointing a Mayor with past experience and understanding of municipal budgeting, local & state politics, and the duties required of the Kenai Peninsula Borough Mayor. As can be seen in the attached resume for Mr. Navarre, he is more than qualified to accomplish these tasks noting his service as Borough Mayor for three separate terms. Mr. Navarre also already knows many of the borough employees and staff members as he was the Borough Mayor before Mayor Pierce was elected in 2018.
2. Mr. Navarre could reasonably accomplish the tasks of the Mayor, especially when the FY24 budget is right around the corner. Again referring to Mr. Navarre's resume and how it shows his extensive government experience. Mr. Navarre has been KPB Mayor through nine budget cycles. He was a House Representative for the KPB in the Alaska State Legislature for 12 years with two years as House Majority Leader, six years on the House Finance Committee, and two years as House Finance Committee Chair. As discussed with Finance Director Brandi Harbaugh, Mr. Navarre would be someone she could work with during the FY24 budget process as they had worked together during his previous term.
3. The Assembly should not consider appointing someone who would also be planning to run for Mayor during the special election as it would not be fair to Kenai Peninsula residents. Appointing someone who plans to run for Mayor gives this person an obvious advantage when it comes to being an incumbent during an election. This person would also be distracted with campaign obligations while trying to learn the KPB budget process. One would end up being neglected. Either would be a disservice to KPB residents. Mike Navarre has stated he does not plan to run for the office of Borough Mayor.

**With the resignation of Mayor Charlie Pierce, appointing Mike Navarre as Interim Mayor is a logical solution to our current dilemma. He is one of very few number of people who can “hit the road running” as Mayor with as minimal of a learning curve as could be asked for in such a position.**

Your consideration of this motion is appreciated.

## Mike Navarre

---

### Education

1970-74 Kenai Central High School  
1974-75 Snow College  
1979-83 Eastern Washington University  
B.A. Government w/ economics minor

### Government Experience

2017-2018 State of Alaska Dept. of Commerce, Commissioner  
1996-99, 2011-2017 Kenai Peninsula Borough Mayor

- Administrative responsibility for 11 departments, 200 employees and \$120 million municipal budget.
- Responsible for implementing policies set by 9 member municipal Assembly.
- President, Alaska Conf. of Mayors 1998-99, 2015-16

1985-96 Alaska State Legislature, House of Representatives

- Finance committee 1991-96
- Finance committee chair 1991-92
- Long Range Financial Planning Commission 1995
- House Majority Leader 1989-90
- Joint House/Senate Health Care Task Force

### Business Experience

ZAN, Incorporated (ARBY'S Roast Beef Restaurants)

- General and financial management responsibility for all aspects of family-owned corporation 1994-present.
- Developed and implemented business plan for expansion from 2 restaurants (1995) to 9 restaurants and \$9.0 million gross revenues (2010). (Restaurants sold in Nov. 2020)
- Board of Directors 1987-present
- Corporate Secretary/Treasurer 1994-1999
- President 1999 – present

Peninsula Electronics, LLC (Radio Shack Stores)

- Owner / General Manager with oversight responsibility for 8 Radio Shack dealerships in Alaska.
- Radio Shack dealer August 2004 - 2014

G & M Properties

- General and financial management responsibility for all aspects 1995 – present

### Other

Kenai Peninsula Boy's and Girl's Club Board 1997 – present  
Rasmuson Foundation Board 2018 - present  
Soldotna Chamber – Person of the Year – 2013  
Kenai Chamber – Pioneer Award – 2013, Volunteer of the year - 2022

**MAYOR'S REPORT TO THE ASSEMBLY**

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

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

**DATE:** September 6, 2022

---

Assembly Request / Response

*None*

Agreements and Contracts

*Alaska Land Mobile Radio Communications Systems*

Other

*Budget Revisions - July 2022*

*Revenue-Expenditure Report - July 2022*





## **Alaska Land Mobile Radio Communications System Membership Agreement**

Access to the Alaska Land Mobile Radio (ALMR) Communications System provided through this Membership Agreement, and any amendment(s) thereto, is conditioned upon the approval of the terms and conditions of access as outlined in (the) ALMR Communications System Cooperative and Mutual Aid Agreement and approval by the Executive Council.

This Membership Agreement is for the period of July 1, 2022, to June 30, 2023, and entered into by and between (the Member aka User) Western Emergency Services whose address is 15727 Kingsley Road, 15727 Kingsley Road, Ninilchik, AK 99639, and the Alaska Land Mobile Radio (ALMR) Executive Council, whose designated representative is the ALMR Operations Management Office, 5900 E. Tudor Road, Suite 121, Anchorage, AK 99507-1245.

### **I. PURPOSE**

ALMR is a multi-site, dedicated public safety wireless communications system providing portable and mobile coverage to its Member agencies. Member agency benefits and services include, but are not limited to, a Project 25 compliant system, multiple system redundancies with backup power, a wide range of talkgroups, auto affiliation and de-affiliation, electronic identification on all transmissions, microwave system connectivity, encryption availability, emergency alert availability, private calling availability, system security, radio interoperability, system management, assistance to User agencies for radio code plug development and subscriber unit familiarization, operations management support including, but not limited to those products and services listed in the Operations Management Office (OMO) and System Management Office (SMO) Customer Support Plans.

Every effort will be made to keep the ALMR system operational 24/7. However, both the Member agency and ALMR acknowledge that there may be situations where planned and unplanned system outages may occur. ALMR will make every effort to avoid service disruptions, will promptly notify Member agencies of disruptions, and will make every effort to respond and restore interrupted service in a timely manner. However, acknowledging that service disruptions are likely, ALMR system infrastructure owners will not be liable for any resulting impact from such disruptions.

### **II. DEFINITIONS**

- A. Abuse of User Privileges:** repeated violation of system guidelines, procedures, protocols, or violation of the Membership Agreement may result in termination of the Membership Agreement subject to the review and direction of the Executive Council. A decision by the Executive Council is final and non-appealable.
- B. Alaska Federal Executive Association (AFEA):** Federal government entities, agencies, and organizations, other than the Department of Defense, that operate on the shared ALMR system infrastructure.
- C. Alaska Land Mobile Radio (ALMR) Communications System:** the ALMR Communications system, which uses but is separate from the State of Alaska Telecommunications System (SATS), as established in the Cooperative and Mutual Aid Agreement.
- D. Alaska Municipal League:** a voluntary non-profit organization in Alaska that represents Member local governments.
- E. Cooperative and Mutual Aid Agreement:** the instrument that establishes ALMR and sets out the terms and conditions by which the System will be governed, managed, operated and modified by the Parties signing the Agreement.
- F. Department of Defense – Alaska:** Alaskan Command, US Air Force and US Army component services operating under United States Pacific Command and United States Northern Command.
- G. Department of Public Safety (DPS):** a State of Alaska (SOA) department that oversees, through the Alaska Public Safety Communications Service (APSCS), the SOA Telecommunication System (SATS), ALMR contracts, and also provides communications technical support to state agencies.
- H. Emergency Alarm:** a Project 25 feature, when enabled, allows a Member to transmit an



## ***Alaska Land Mobile Radio Communications System Membership Agreement***

emergency alarm to their dispatch center, or a dispatch center mutually agreed upon.

- I. **Executive Council:** governing body made up of three voting members and two associate members representing the original four constituency groups: the State of Alaska, the Department of Defense, Federal Non-DOD agencies (represented by the Alaska Federal Executive Association), and local municipal/government (represented by the Alaska Municipal League and the Municipality of Anchorage).
- J. **Gateway:** a device that allows a disparate radio to communicate real time, overcoming spectrum, formatting, and other technical challenges. ALMR utilizes MotoBridge™ gateways.
- K. **Information Assurance (IA):** protects and defends information and information systems by ensuring their availability, integrity, authentication, confidentiality, and non-repudiation. This includes providing for restoration of information systems by incorporating protection, detection, and reaction capabilities.
- L. **Local Governments:** those Alaska political subdivisions defined as municipalities in AS 29.71.800(13).
- M. **Member:** a public safety agency including, but not limited to a general government agency (local, state, or federal) its authorized employees and personnel (paid or volunteer), and its service provider, participating in and using the system under a Membership Agreement.
- N. **Membership Agreement:** the agreement entered into between the ALMR Operations Management Office, as the designated agent for the Executive Council, and a user agency, which sets forth the terms and conditions under which the system provides services to a user agency and the user agency's responsibilities, while operating on the system.
- O. **Municipality of Anchorage (MOA):** the MOA covers 1,951 square miles with a population of over 290,000. The MOA stretches from Portage, at the southern border, to the Knik River at the northern border, and encompasses the communities of Girdwood, Indian, Anchorage, Eagle River, Chugiak/Birchwood, and the native village of Eklutna.
- P. **Non-Proprietary Talkgroup –** a talkgroup assigned during a multi-agency operation, such as one assigned by central dispatch. A non-proprietary talkgroup is not member-exclusive and is cooperatively shared by participating Members.
- Q. **Operations Manager:** represents the User Council interests and makes decisions on issues related to the day-to-day operation of the system and any urgent or emergency system operational or repair decisions; establishes policies, procedures, contracts, organizations, and agreements that provide the service levels as defined in the Service Level Agreement in coordination with the User Council.
- R. **Operations Management Office (OMO):** develops recommendations for policies, procedures, and guidelines; identifies technologies and standards; and coordinates intergovernmental resources to facilitate communications interoperability with emphasis on improving public safety and emergency response communications.
- S. **Party/Parties:** one or more Parties who have signed the Agreement (Cooperative and Mutual Aid Agreement). The Parties to the agreement are Department of Defense - Alaska, Alaska Federal Executive Association, and the State of Alaska, respectively or collectively.
- T. **P25 Standards:** the P25 suite of standards involves digital land mobile radio (LMR) services for local, state and national (federal) public safety organizations and agencies. P25 is applicable to LMR equipment authorized or licensed, in the U.S., under the National Telecommunications and Information Administration (NTIA) or Federal Communications Commission (FCC) rules and regulations.
- U. **Proprietary Talkgroup:** an exclusive talkgroup assigned to a single, specific agency.
- V. **Radio –** either a Project 25 compliant control station, consolette, mobile or portable radio, which has a unique identification number and is assigned to the ALMR.
- W. **Radio Programming:** fleetmapping, template programming and reprogramming, and assignment of talkgroups within ALMR.
- X. **State of Alaska (SOA):** the primary maintainer of the SATS (the State's telecommunications infrastructure system), and shared owner of the System.
- Y. **State of Alaska Telecommunications Systems (SATS):** the State of Alaska statewide telecommunications system microwave network.





## **Alaska Land Mobile Radio Communications System Membership Agreement**

- Z. System Management:** the responsibility residing with the Operations Manager/System Manager on behalf of all ALMR Members that include, but are not limited to:
  - 1. Assign radio use priorities.
  - 2. Assign radio identification numbers.
  - 3. Manage talkgroups to assure appropriate use of ALMR.
  - 4. Set standards for the selection and supervision of ALMR personnel.
  - 5. Enforce guidelines, procedures, and protocols governing the operation of radios on ALMR.
  - 6. Generate and use statistical data and reports concerning Member agency talkgroups, call duration, call types, busy signals, and other data analyses and reports; and
  - 7. Enforce termination of the Membership Agreement when a Member agency's conduct or action(s) cause systemic and/or continuous ALMR operational problems.
- AA. System Management Office:** the team of specialists responsible for management of maintenance and operations of the system.
- BB. Talkgroup:** the electronic equivalent of a channel on a trunked system; a unique group of radio users that can communicate with each other. (NOTE: Talkgroups differ from regular and conventional radio channels in which they are not restricted to a certain radio frequency and may use up to 21 separate frequencies that are assigned by a controller on a control channel.)
- CC. Template:** the software programmed in a radio provided to customers by the SMO that controls the radio functions and communication capabilities.
- DD. User:** an agency, person, group, organization, or other entity which has an existing written Membership Agreement to operate on ALMR with one of the Parties to the Cooperative and Mutual Aid Agreement. The terms User and Member are synonymous and interchangeable.
- EE. User Council:** governing body responsible for recommending all operational and maintenance decisions affecting the System. Under the direction and supervision of the Executive Council, the User Council has the responsibility for management oversight and operation of the System. The User Council oversees the development of System operations plans, procedures and policies.

### **III. ALMR COMMUNICATIONS SERVICES**

Services provided are listed in the Operations Management Office and System Management Office Customer Support Plans at <http://www.alaskalandmobileradio.org>.

### **IV. GENERAL PROVISIONS**

- A. ALMR Mobile Radio Coverage:** ALMR provides portable and mobile radio communication coverage to the Member subject to the Member's responsibilities and compliance with recommended optimal performance standards for equipment, antenna installation, and maintenance. If the Member agency detects possible ALMR network infrastructure malfunctions or radio communication coverage loss, the Member should first contact the ALMR Help Desk and provide specific information regarding, as requested. If the system is cleared as a probable cause, the agency should then contact its equipment service or maintenance provider for an evaluation of the problem. If the service provider determines the problem is not an equipment installation or maintenance problem, the Member should promptly notify the Help Desk. The Help Desk will immediately notify the System Manager, or designated on-call technician, who will promptly investigate and take appropriate corrective action to alleviate the coverage loss or network infrastructure malfunction and report the corrective action to the Member agency. Coverage is not guaranteed and will vary from location to location. The Member agency is encouraged to conduct its own radio communications coverage test to determine the expected coverage level in its geographic jurisdiction.
- B. Private Calling Availability:** an agency may choose to avail itself of Private Calling. Private calling permits properly programmed mobile and portable radios in a talkgroup to enter into one-on-one conversations. Only the initiating and target radio(s) are able to communicate with each other. Private calling can tie-up ALMR System resources. Consequently, a determination of the



## ***Alaska Land Mobile Radio Communications System Membership Agreement***

need and potential impact on the system will be made by the System Management Office when such a request is received from Member agencies.

- C. **Electronic and Infrastructure Maintenance:** ALMR provides complete monitoring, inspection, and maintenance programs for all Motorola P25 trunked ALMR radio frequency (RF) infrastructure in operation at its system sites through contracts and in accordance with the Service Level Agreement.
- D. **System Redundancy and Security:** ALMR provides a system redundancy called fault tolerance. With fault tolerance, a single point of failure will generally not result in negative system wide performance. Many redundant and backup systems within ALMR are designed to eliminate complete system failure. Several levels of survivability are available. In the case of a catastrophic event, the rest of the system will continue to function in a site-trunking communication manner.
- E. **Performance Standards and Monitoring:** ALMR utilizes automated performance standards and automated diagnostics, which are monitored 24 hours a day, every day. System management is maintained at the System Management Office and zone controllers on a daily basis. ALMR staff adhere to stringent quality standards of installation and maintenance through scheduled automated testing of all sites, monitoring of Member satisfaction on a regular basis, tracking of Member problems and service requests, monitoring of scheduled and unscheduled System downtime, oversight of System traffic performance, drive testing within System, collection and analysis of empirical data, and planned system upgrades and enhancements.
- F. **Upgrades and Enhancements:** upgrades are changes made to ALMR infrastructure to assure compliance or to improve upon previously existing features and operations of ALMR. Some upgrades may be provided to all Member agencies at no additional charge. Enhancements are modifications made to ALMR services or systems that add functions or features not originally part of ALMR or the services requested by the Member agencies. Such enhancements made to the infrastructure may also require an upgrade or replacement of user subscriber assets. To access such enhancements and features, it is solely the responsibility of the User to upgrade their subscriber assets. Also, if applicable, enhancements may necessitate an adjustment in all Member agencies fees.
- G. **Gateway Use:** Use of gateway(s) is available to ALMR Members on the system. Gateways are options for members to use if they have a gateway device and obtain the required approval to use it on the system.
- H. **Information Assurance:** as provided through the Department of Defense Information Assurance Risk Management Framework (DIARMF).
- I. **OMO Standards Measurement and Trends** – as provided by the Operations Management Office Customer Support Plan and the Service Level Agreement.
- J. **Service Level Agreement** – outlines the operations and maintenance services as required by the User Council for the sustainment and operations of the ALMR infrastructure. The performance metrics contained in the SLA describes the maintenance standards for ALMR system infrastructure owners.
- K. **State-owned frequencies.** Subsequent to provisions of Federal Communications Commission (FCC) Regulation 47CFR90.421(b), the State Of Alaska grants specific and limited permission as a part of ALMR membership to utilize the frequencies listed in below under the terms and conditions of the State's FCC license(s). These frequencies are specifically set aside for public safety interoperability and used as part of the designated required interop zones for membership. Members shall immediately cease using any or all frequencies upon the request of the state, all channels will be named per state instructions.

### **V. MEMBERSHIP OBLIGATIONS**

- A. **Activation and Member Fees** – Not later than June 30 each year, the Parties (signatories) to the Cooperative and Mutual Aid Agreement will determine the cost share of individual Members, if applicable. Each Party (signatory) to the Cooperative and Mutual Agreement will be responsible for communicating any associated costs to the Member agencies.



## Alaska Land Mobile Radio Communications System Membership Agreement

1. **State of Alaska** - For FY2023, cost share for your agency is calculated at N/A. The State of Alaska Department of Public Safety has funded your cost share in the amount of N/A. Your final cost share due is N/A.
  2. **Department of Defense** - For FY2023, cost share for your agency is calculated at N/A. Your final cost share due is N/A. You will coordinate directly with the State of Alaska Department of Public Safety to fulfill your cost share obligation.
  3. **Federal Non-DOD** - For FY2023, cost share for your agency is calculated at N/A. Your final cost share due is N/A. You will coordinate directly with the State of Alaska Department of Public Safety to fulfill your cost share obligation.
  4. **Municipalities/NGOs** - For FY2023, cost share for your agency is calculated at \$7,174.31. The State of Alaska Department of Public Safety has funded your cost share in the amount of \$7,174.31. Your final cost share due is \$0.00.
- B. Funding Obligation:** Individual Member agencies operating on the System are responsible for requesting and obtaining sufficient funds to cover that Member's annual cost share and shared system infrastructure costs, as applicable. Use of the State of Alaska Infrastructure Operations and Maintenance contract, requires timely payment of invoices. By using this contract vehicle, member agencies will abide by payment timelines and penalties as detailed: Payment of invoices is NET 30 Days; non-payment after 45 days may incur a penalty.
- NOTE:** The DOD Member agency Contract Officer Representative (COR) will be responsible for assuring funds associated with their apportioned cost share, infrastructure and Operations Management cost liability are provided and in place, as required, to ensure timely execution of contracts providing mutual services for the ALMR Membership.
- C. Member Radio Equipment:** Member agencies may only use ALMR-approved radio equipment. Member agencies are responsible for acquiring and obtaining programming for their own equipment. A list of acceptable radio equipment is available on the ALMR website or from the System Management Office. This list will be updated as additional radios pass the acceptance test procedures (ATP). Member agencies are accountable for equipment used on the ALMR system and must report the lost, stolen, damaged or destroyed equipment to the Help Desk immediately upon discovery.
- D. Radio Maintenance and Repair:** Each Member agency is responsible for proper maintenance and repair of its radio subscriber equipment. This assures that the member agency's radios are in optimal operating order and will not have an adverse impact on other Members' use of ALMR.
- E. Personal Business:** No personal business may be conducted on ALMR by the Member, its employees, or authorized agents, including volunteers and the Member agency's service provider.
- F. Compliance with Federal, State and Local Laws:** Member agencies will comply with all current and future Federal, State, and local laws, rules, and regulations, as they relate to consolidated public safety and dispatching.
- G. Compliance with Guidelines, Procedures, and Protocols:** The Member agencies will comply with all guidelines, policies, procedures, and protocols governing the operation and use of the ALMR system as established by the User Council, approved by the Executive Council, and enacted by the Operations Management or System Management Offices. Member agencies will comply with all directives of the Executive Council, including but not limited to those listed in this Membership Agreement. Copies of policies and procedures are available to the Member agencies through the Operations Management Office or at <http://www.alaskalandmobileradio.org>.
- H. Member Agency POC:** Each Member agency will identify a central point of contact (POC) to serve as its liaison to the ALMR System Management Office. The POC will be responsible for authorization of template modifications, coordination of new radios onto ALMR, providing fleetmapping data for record keeping purposes, providing after-hour emergency telephone numbers for member-owned infrastructure as outlined in the ALMR Service Level Agreement, and attending meetings necessary for the safe and efficient operation of ALMR. Member agencies are responsible for notifying the ALMR Help Desk/OMO immediately upon changes to their POCs.





## **Alaska Land Mobile Radio Communications System Membership Agreement**

- I. **Security:** All management console or dispatch console operators shall complete the required ALMR IA Training prior to obtaining ALMR System user credentials. All system users shall comply with the timely application of security patches/updates when notified of their availability by the SMO. No agency shall allow the connection of unauthorized components to the System or to any port on the system at any time. Agencies shall ensure no non-standard, unapproved applications are loaded on ALMR computers, servers, or routers at any time. Agencies shall ensure no unauthorized personnel are allowed access to system management components (e.g. management consoles) at any time. Member agencies shall ensure encryption is used, whenever appropriate. Agencies shall comply with all Information Assurance controls, policies, procedures, and processes.
- J. **Corrective Action:** In order to protect the integrity, security, safety, and efficient operation of ALMR for all its Member agencies, Member agencies will take appropriate corrective action against any of its employees who violate ALMR guidelines, procedures, or protocols including those set out in this Membership Agreement.
- K. **System Management:** Member agencies will comply with System Management direction in order to assure the safe and efficient operation of ALMR for all Members.
- L. **Trained Personnel:** Member agencies are responsible for providing training to their personnel and will not permit any employee or other personnel, including volunteers, to use ALMR until such individual(s) have received proper/appropriate radio use and security training.
- M. **Contracting Responsibilities – DOD Member Agencies/Organizations:** DOD Member agencies/organizations will nominate a Contracting Officer Representative (COR) through the ALMR Contract Functional Commander (ALCOM J6) to 673rd Contracting for appointment. DOD Member agencies/organizations will maintain a COR at all times. CORs will execute the contract administration related to requirements that agencies/organizations execute through the associated ALMR contracts from which they obtain services.

### **VI. DISPUTE RESOLUTION**

If any issue of ALMR non-performance arises under this Membership Agreement, the parties to the Cooperative and Mutual Aid Agreement agree to resolve the issue at the lowest management level of each party. In the event the issue remains unresolved, the parties agree to immediately escalate the issue to upper-level management for their consideration. They will consider the details of the non-performance issue, assess whether there have been past issues of non-performance, determine how long the non-performance has been continuing, determine the seriousness of the non-performance, and negotiate, in good faith, a mutually agreeable solution. In the event all parties cannot agree on a solution, the non-performance issue shall be directed to the Executive Council who will consult with, and seek advice from, the User Council on resolution of the non-performance issue. A decision by the Executive Council is final and non-appealable.

### **VII. GOVERNANCE**

- A. **Executive Council:** The Executive Council provides direction for the administration and operation of ALMR. The Executive Council is charged with responsibility to review and approve recommendations regarding future ALMR system features and enhancements, review and advise on customer service complaints, non-performance issues and potential Member agency termination due to abuse of user privileges. The Executive Council takes advice from the User Council and other committees, working groups, and advisory panels set up by the Executive Council to assist them in making determinations on policy and direction. (Members of the Executive Council are listed at [www.alaskalandmobileradio.org](http://www.alaskalandmobileradio.org))
- B. **User Council:** The User Council establishes policies and procedures regarding the operation of ALMR. The User Council is responsible for all operational and maintenance decisions affecting the system. Under the direction and supervision of the Executive Council, the User Council has the responsibility for management oversight and operations of the system. The User Council, through the OMO, oversees the development of System operations plans, procedures and



policies under the direction and guidance of the Executive Council. (Members of the User Council are listed at [www.alaskalandmobileradio.org](http://www.alaskalandmobileradio.org))

## **VIII. DURATION, CANCELLATION, & TERMINATION OF MEMBERSHIP**

Agency membership on ALMR will remain in effect until canceled or terminated by the member agency upon one-year written notice. The Membership Agreement, between the Member agency and the Executive Council, may also be terminated for violation(s) of the terms and conditions of the Cooperative and Mutual Aid Agreement (inclusive of its appendices) upon one-year written notice to the Member agency. Termination for cause, or departure at the request of the agency, does not relieve the Member agency of their financial obligations, if applicable, for the inclusive term of the membership (as specified on page one). Termination is subject to review and approval by the Executive Council.

## **IX. TERMINATION ASSISTANCE**

If this Membership Agreement is canceled or terminated for any reason, ALMR will provide reasonable assistance as requested by the Member agency to allow for the orderly transfer of services.

## **X. MISCELLANEOUS**

- A. Waiver:** the failure of a signatory to insist upon strict adherence to any term of this Membership Agreement shall not be considered a waiver or deprive the signatory of the right thereafter to insist upon the strict adherence to that term of the Membership Agreement.
- B. Modification:** this Membership Agreement may not be modified, amended, extended, or augmented, except by written amendment signed by both the signatories to the Membership Agreement and approved by the Executive Council.
- C. Governing Law:** this Membership Agreement shall be governed by and construed in accordance with the laws of the State of Alaska, and any and all applicable Federal laws.
- D. Headings:** the headings given to the sections and paragraphs of this Membership Agreement are inserted only for convenience and are in no way to be construed as part of this Membership Agreement, or as a limitation of the scope of the particular sections or paragraphs to which the heading refers.
- E. Independent Contractor Relationship:** the relationship between ALMR and Member agencies is that of an independent contractor and client. No agent, employee, or servant of ALMR shall be deemed to be an employee, agent, or servant of the Member agencies. Member agencies will be solely and entirely responsible for its acts and the acts of its agents, employees, servants, subcontractors, and volunteers regarding compliance with this Membership Agreement.

## **XI. SPECIAL PROVISIONS**

- A. Funding Obligation:** Per the Cooperative and Mutual Aid Agreement, Article 2, Section 11, and Article 9, Section 7, and as further noted in Article 11, Section 6, nothing contained in this Membership Agreement shall be construed as binding the Member agency to expend in any one fiscal year any sum in excess of available appropriations made by Congress, the Alaska Legislature, a city council, a borough assembly, or a board of directors for the purposes of this Membership Agreement for that fiscal year, or to be obligated to make an expenditure of money in excess of such appropriations.
- B. Liability:** the signatories to this Membership Agreement verify their represented agencies accept responsibility for any property damage, injury, or death, caused by the acts or omissions of their respective employees acting within the scope of their employment under this Membership Agreement to the fullest extent permitted by law. Signatories shall not be held personally liable for financial or any other obligations, clauses, or responsibilities regarding this system or its affects.





**Alaska Land Mobile Radio Communications System  
Membership Agreement**


**XII. NOTICES**

All notices given under this Membership Agreement, except for emergency service requests, will be made in writing. All notices will be sent to the Member agencies as follows: (fill in all gray fields, as applicable)

Agency Name Western Emergency Services  
POC Name Chief Jon Marsh  
Address 1 15727 Kingsley Road  
Address 2 \_\_\_\_\_  
City Ninilchik  
Zip code 99639  
Phone 907-235-6700  
Cell \_\_\_\_\_  
Fax: 907-235-2633  
Attention Chief Jon Marsh  
E-mail jmarsh@kpb.us

Execution of this Membership Agreement may only be made by a duly authorized representative of the Member agency/local unit of government. By signing, agencies acknowledge understanding and acceptance of all terms and conditions of membership and agree to pay their cost share allotment, as listed on page 5. This Membership Agreement shall become effective as of the date of the last signature.

**AUTHORIZED MEMBER SIGNATORY:**

Agency Name Western Emergency Services  
Representative Name Jon Marsh  
Representative Title Chief  
Signature   
Date 08/08/2023

**AUTHORIZED PARTY SIGNATORY:**

Entity Name State of Alaska  
Representative Name Mr. Scott Stormo  
Representative Title Telecommunications System  
Manager  
Signature   
Date 8/10/2022

**CERTIFYING OFFICIAL:**

Representative Name: Mr. Charlie Pierce  
Title: Borough Mayor  
Signature/date: \_\_\_\_\_




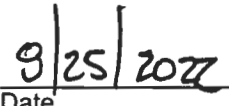
**Alaska Land Mobile Radio Communications System  
Membership Agreement**

Alaska Land Mobile Radio  
Attention: Operations Management Office  
5900 East Tudor Road, Suite 121  
Anchorage, Alaska 99507-1245

**Approval** (under authority vested by the Executive Council)

Dan Nelson  
Operations Manager

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Date

# Kenai Peninsula Borough

## Finance Department

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### MEMORANDUM

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

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

**THRU:** Brandi Harbaugh, Finance Director *brb*

**FROM:** Sarah Hostetter, Payroll Accountant *SH*

**DATE:** August 22, 2022

**RE:** Budget Revisions – July 2022

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Attached is a budget revision listing for July 2022. The attached list contains budget revisions between major expenditure categories (i.e., maintenance & operations and capital outlay). Other minor transfers were processed between object codes within major expenditure categories.

**911 DISPATCH**

To cover Stancil maintenance support, overlooked in FY23 budget due to install date and because the first year was covered under contract.

264-11255-00000-40110 (Regular Wages)		\$8,037.78
264-11255-00000-43019 (Software Licensing)	\$8,037.78	

**BEAR CREEK FIRE SERVICE AREA**

To cover emergency repairs for an Engine.

207-51210-00000-50442 (Transfer Bear Creek Capital Project Fund)		\$30,000.00
207-51210-00000-43720 (Equipment Maintenance)	\$30,000.00	

**CENTRAL EMERGENCY SERVICES**

Transfer funds to complete the order of a forcible entry training door.

211-51610-00000-43780 (Buildings & Grounds Maintenance)		\$388.16
211-51610-00000-48311 (Machinery & Equipment)	\$388.16	

**CENTRAL EMERGENCY SERVICES**

Moving funds to the appropriate account to purchase a training Manikin.

211-51610-00000-42263 (Training Supplies)		\$2,485.28
211-51610-00000-48740 (Minor Machines & Equipment)	\$2,485.28	

**FINANCE - SALES TAX**

To cover maintenance fees for the mass communication tool integration, the integration process was started after FY23 budget was established.

100-11441-00000-40110 (Regular Wages)		\$2,700.00
100-11441-00000-43019 (Software Licensing)	\$2,700.00	

**WESTERN EMERGENCY SERVICES**

To cover various rental costs: PO box, oxygen cylinders, and maintenance shop rental.

209-51410-00000-50252 (Transfer to Land Trust Investment Fund)		\$8,120.00
209-51410-00000-43720 (Equipment Maintenance)		\$1,350.00
209-51410-00000-43810 (Rents & Operating Leases)	\$9,470.00	

# Kenai Peninsula Borough

## Finance Department

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### MEMORANDUM

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

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

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

**FROM:** Sarah Hostetter, Payroll Accountant *SH*

**DATE:** August 22, 2022

**RE:** Revenue-Expenditure Report – July 2022

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Attached is the Revenue-Expenditure Report of the General Fund for the month of July 2022. Please note that 8.33% of the year has elapsed, 11.52% of budgeted revenues have been collected, and 2.29% of budgeted expenditures have been made.

KENAI PENINSULA BOROUGH  
Revenue Report  
For the Period  
July 1 through July 31, 2022

ACCOUNT NUMBER	DESCRIPTION	ESTIMATED REVENUE	YEAR TO DATE RECEIPTS	MONTH TO DATE RECEIPTS	VARIANCE	% COLLECTED
31100	Real Property Tax	\$ 31,396,714	\$ 3,625,902	\$ 3,625,902	\$ (27,770,812)	11.55%
31200	Personal Property Tax	1,867,988	124,440	124,440	(1,743,548)	6.66%
31300	Oil Tax	6,755,283	6,751,160	6,751,160	(4,123)	99.94%
31400	Motor Vehicle Tax	642,580	-	-	(642,580)	0.00%
31510	Property Tax Penalty & Interest	717,562	8,128	8,128	(709,434)	1.13%
31610	Sales Tax	42,000,000	28,150	28,150	(41,971,851)	0.07%
33110	In Lieu Property Tax	3,100,000	-	-	(3,100,000)	0.00%
33117	Other Federal Revenue	144,700	-	-	(144,700)	0.00%
33220	Forestry Receipts	500,000	-	-	(500,000)	0.00%
34110	School Debt Reimbursement	2,449,113	-	-	(2,449,113)	0.00%
34221	Electricity & Phone Revenue	155,000	-	-	(155,000)	0.00%
34222	Fish Tax Revenue Sharing	500,000	-	-	(500,000)	0.00%
34210	Revenue Sharing	850,000	-	-	(850,000)	0.00%
37350	Interest on Investments	364,493	47,855	47,855	(316,638)	13.13%
39000	Other Local Revenue	268,834	26,110	26,110	(242,723)	9.71%
290	Solid Waste	602,000	23,573	23,573	(578,427)	3.92%
Total Revenues		\$ 92,314,267	\$ 10,635,317	\$ 10,635,317	\$ (81,678,950)	11.52%



# KENAI PENINSULA BOROUGH

## Expenditure Report

For the Period

July 1 through July 31, 2022

DESCRIPTION	REVISED BUDGET	YEAR TO DATE EXPENDED	MONTH TO DATE EXPENDED	AMOUNT ENCUMBERED	AVAILABLE BALANCE	% EXPENDED
Assembly:						
Administration	\$ 542,587	\$ 78,288	\$ 78,288	\$ 162,251	\$ 302,048	14.43%
Clerk	614,064	23,434	23,434	25,770	564,860	3.82%
Elections	204,513	-	-	89,346	115,167	0.00%
Records Management	381,831	11,910	11,910	38,452	331,469	3.12%
Mayor Administration	1,114,354	33,788	33,788	2,475	1,078,091	3.03%
Purch/Contracting/Cap Proj	710,159	28,049	28,049	22,401	659,709	3.95%
Human Resources:						
Administration	930,768	33,969	33,969	23,915	872,884	3.65%
Print/Mail	218,225	13,431	13,431	12,775	192,019	6.15%
Custodial Maintenance	132,655	4,627	4,627	71	127,957	3.49%
Information Technology	2,463,342	89,659	89,659	113,280	2,260,404	3.64%
Emergency Management	1,028,719	47,181	47,181	21,843	959,695	4.59%
Legal Administration	1,285,948	33,994	33,994	261,915	990,038	2.64%
Finance:						
Administration	575,568	22,217	22,217	2,973	550,378	3.86%
Services	1,197,353	75,800	75,800	39,417	1,082,136	6.33%
Property Tax	1,187,490	169,818	169,818	53,413	964,258	14.30%
Sales Tax	1,226,455	101,998	101,998	4,801	1,119,655	8.32%
Assessing:						
Administration	1,482,895	162,691	162,691	45,709	1,274,494	10.97%
Appraisal	1,784,074	61,965	61,965	4,212	1,717,897	3.47%
Resource Planning:						
Administration	1,668,055	41,703	41,703	30,702	1,595,651	2.50%
GIS	722,796	31,141	31,141	2,179	689,476	4.31%
River Center	778,460	25,854	25,854	28,781	723,825	3.32%
Senior Citizens Grant Program	791,444	-	-	791,444	-	0.00%
School District Operations	61,313,017	972,500	972,500	-	60,340,517	1.59%
Solid Waste Operations	11,663,194	141,952	141,952	2,524,228	8,997,013	1.22%
Economic Development	549,878	-	-	61,440	488,438	0.00%
Non-Departmental	1,767,099	-	-	48,841	1,718,259	0.00%
Total Expenditures	\$ 96,334,942	\$ 2,205,970	\$ 2,205,970	\$ 4,412,633	\$ 89,716,339	2.29%

Introduced by:	Mayor
Date:	08/23/22
Hearing:	09/20/22
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-40**

**AN ORDINANCE AMENDING KPB 14.31.130 RELATING TO NOTICE OF  
ASSESSMENTS FOR ROAD IMPROVEMENT SPECIAL ASSESSMENT DISTRICTS  
TO ENSURE CODE COMPATIBILITY WITH SOFTWARE CONSTRAINTS**

**WHEREAS,** current Kenai Peninsula Borough Code (KPB) 14.31.130(A) provides that within 15 days after the enactment of an ordinance under KPB 14.31.130 levying a special assessment, the finance director shall mail a statement to the owner of record of each property assessed; and

**WHEREAS,** due to software constraints in calculating the levy related to the special assessment the system is not able to auto-generate the required statement to property owners within 15 days of the enactment, which results in the finance department manually inputting necessary levy information to mail the required statement to the owner of record of each property assessed; and

**WHEREAS,** this ordinance amends KPB code to provide that the required statement will be mailed on the first day of the month following enactment of the ordinance of assessment for a newly formed road improvement assessment district;

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

**SECTION 1.** That KPB 14.31.130(A) is amended as follows:

**2.33.020. – Notice of assessment.**


- A. [WITHIN 15 DAYS AFTER] On the first day of the month following the adoption of an ordinance levying an assessment under KPB 14.31.110, the finance director shall mail an assessment statement to the record owner of each assessed parcel. The statement shall describe the parcel, state the date of mailing of the statement, the amount of the total allocated assessment, the assessment lien amount, the times for payment of the assessment, the rate of interest on unpaid installments, the penalty and rate of interest on delinquent installments, and notice of the deferral of principal option described in KPB 14.31.145. The statement shall include notice that it is the final determination of the assessment and that the property owner has 30 days from the date of mailing of the notice to appeal the assessment to the superior court. The statement shall also include notice that if a benefited

parcel is subdivided following assessment of costs under this chapter, the property owner shall be required to pay off the remaining balance of the assessment, or prepay estimated costs if the final assessment has not been determined, prior to approval of the final plat pursuant to KPB 20.60.030.


- B. Within five days after the assessment statements are mailed, the finance director shall publish a notice that such assessments have been mailed and that the assessment roll is on file in the office of the borough clerk.
- C. After adoption of an ordinance levying a special assessment under KPB 14.31.110, the borough clerk shall file in the office of the district recorder an appropriate notice of assessment lien on all assessed parcels.

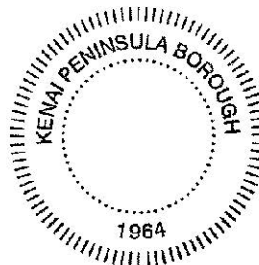
**SECTION 2.** That this ordinance shall be effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 20TH DAY OF SEPTEMBER, 2022.**

  
Brent Johnson, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



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



# Kenai Peninsula Borough


## Finance Department

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### MEMORANDUM

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

**THRU:** Charlie Pierce, Mayor   
Jed Painter, Acting Roads Director 

**FROM:** Brandi Harbaugh, Finance Director 

**DATE:** August 11, 2022

**SUBJECT:** Ordinance 2022-40, Amending KPB 14.31.130 Relating to Notice of Assessments for Road Improvement Special Assessment Districts to Ensure Code Compatibility with Software Constraints (Mayor)

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Current Kenai Peninsula Borough Code (KPB) 14.31.130(A) provides that within 15 days after the adoption of an ordinance under KPB 14.31.130 levying a special assessment, the finance director shall mail a statement to the owner of record of each property assessed.

Due to software constraints in calculating the levy related to the special assessment, the system is not able to auto-generate the required statement to property owners within 15 days of the enactment. As a result, the Finance Department must manually input necessary levy information to mail the required statement to the owner of record of each property assessed.

This ordinance will amend KPB code to provide that the required statement will be mailed on the first day of the month following enactment of the ordinance of assessment for a newly formed road improvement special assessment district.

Your consideration of the ordinance is appreciated.

Introduced by:	Mayor
Date:	08/23/22
Hearing:	09/20/22
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-41**

**AN ORDINANCE AMENDING KPB CHAPTER 21.02 TO ESTABLISH AN ADVISORY  
PLANNING COMMISSION IN THE NIKISKI AREA**

**WHEREAS,** the assembly has previously created local advisory planning commissions (“APCs”) within the Kenai Peninsula Borough (“KPB”) for the purpose of providing recommendations to the KPB Planning Commission on land use planning and public land management issues which may affect the existing and/or future character of their communities; and

**WHEREAS,** Goal 2 of the 2019 KPB Comprehensive Plan is to “Proactively manage growth to provide economic development opportunities on the Kenai Peninsula Borough while preserving what residents and visitors value about the area’s natural features”; and

**WHEREAS,** Goal 2, Objective E states, “Actively work with interested communities outside of the incorporated cities to help develop locally-driven community plans and Strategy 4: Near-Term: Encourage unincorporated communities to engage with their established local Advisory Planning Commission (“APC”) and encourage establishment of new APCs for communities not currently represented”; and

**WHEREAS,** a petition, signed by over 20 qualified voters who are residents within the proposed boundaries of the Nikiski APC, has been received by the KPB Clerk requesting the formation of an APC in the Nikiski community; and

**WHEREAS,** on July 19, 2022, the KPB Planning Director held a community meeting to discuss the proposed boundaries of the Nikiski APC; and

**WHEREAS,** the petitioned area of interest is 3,500,000 acres as the proposed boundaries of the Nikiski APC and the KPB Planning Department has indicated that additional community input is needed for the effective management of these lands; and

**WHEREAS,** at its meeting held on August 22, 2022, the KPB Planning Commission recommended approval as amended;

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

**SECTION 1.** That the Kenai Peninsula Borough Code of Ordinances is hereby amended by adding a new section to be numbered 21.02.230, which shall read as follows:

**21.02.230. Nikiski Advisory Planning Commission.**

An advisory planning commission is established for the community of the borough known as Nikiski with boundaries as follows:

Commencing at the township line between T5N and T6N R17W S.M., and the mean high water line on the westerly shore of Cook Inlet;

Thence westerly along the township line between T5N and T6N to the westerly boundary of the Kenai Peninsula Borough;

Thence northerly and easterly along the boundary of the Kenai Peninsula Borough through Cook Inlet to the protracted northeast corner of T11N R5W in Turnagain Arm;

Thence southeasterly to the intersection of the southerly mean high water line of Turnagain Arm and the 150th meridian west of Greenwich within T10N R4W S.M.;

Thence southerly along the 150th meridian to the township line between T8N and T9N R4W;

Thence westerly along the township line between T8N and T9N to the northwest corner of T8N R9W S.M.;

Thence southerly along the range line between R9W and R10W to the southeast corner of T6N R10W S.M.;

Thence westerly along the township line between T5N and T6N to the southeast corner of Section 32 T6N R10W;

Thence northerly along the section line between Sections 32 and 33 to the northeast corner of Section 32;

Thence westerly along the section line to the northwest corner of Section 31 T6N R10W on the corporate boundary of the city of Kenai;

Thence northerly and westerly along the corporate boundary of the city of Kenai to the intersection with the mean low water line of Cook Inlet and the section line between Sections 23 and 26 T6N R12W S.M.;

Thence westerly along the section line extended three miles into Cook Inlet;



Thence southwesterly to the protracted southeast corner of T6N R14W in Cook Inlet;

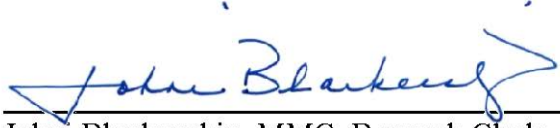
Thence westerly along the protracted township line between T5N and T6N to the mean high water line on the westerly shore of Cook Inlet the true point of beginning.

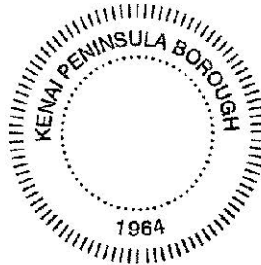
**SECTION 2.** That this ordinance shall be effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 20TH DAY OF SEPTEMBER, 2022.**

  
Brent Johnson, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



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

**MEMORANDUM**

**TO: Assembly Members**

**THRU: Lane Chesley, Chair Policies and Procedures Committee**

**FROM: Robert Ruffner, Planning Director**

**DATE: 9/20/2022**

**RE: Nikiski Advisory Planning Commission** Ord. 2022-41

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Chair Chesley,

Upon introduction of ordinance 2022-41, the creation of a Nikiski Advisory Planning Commission (APC), committee discussion focused on the appropriate size for an APC and comparative analysis was provided for existing APCs. In consideration of the size and extent of the petitioned APC for Nikiski, this memo provides suggested amendment language consistent with the Planning Commission's recommendation to create the boundary as petitioned minus Cook Inlet and the Westside should a member wish to amend the ordinance.

Amend the 7<sup>th</sup> Whereas to read:

**WHEREAS**, at its meeting held on August 22, 2022, the KPB Planning Commission recommended approval as amended for an alternative smaller area; and

Add an 8<sup>th</sup> Whereas to read:

**WHEREAS**, the alternative includes all the petitioned land on the Kenai Peninsula, excluding Cook Inlet and the West side of the Kenai Peninsula Borough and encompasses 307,410 acres, more in-keeping with existing Advisory Planning Commission size.

Amend Section 1 to read as follows:

**SECTION 1.** That the Kenai Peninsula Borough Code of Ordinances is hereby amended by adding a new section to be numbered 21.02.230, which shall read as follows:

**21.02.230. Nikiski Advisory Planning Commission.**

Page -2-  
Date  
To:  
RE:

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An advisory planning commission is established for the community of the borough known as Nikiski with boundaries as follows:

Beginning at the intersection of the southerly mean high water line of Turnagain Arm and the 150th meridian west of Greenwich within T10N R4W S.M.;

Thence southerly along the 150th meridian to the township line between T8N and T9N R4W;

Thence westerly along the township line between T8N and T9N to the northwest corner of T8N R9W S.M.;

Thence southerly along the range line between R9W and R10W to the southeast corner of T6N R10W S.M.;

Thence westerly along the township line between T5N and T6N to the southeast corner of Section 32 T6N R10W;

Thence northerly along the section line between Sections 32 and 33 to the northeast corner of Section 32;

Thence westerly along the section line to the northwest corner of Section 31 T6N R10W on the corporate boundary of the city of Kenai;

Thence northerly and westerly along the corporate boundary of the city of Kenai to the intersection with the mean high water line of Cook Inlet and the section line between Sections 23 and 26 T6N R12W S.M.;

Thence northerly and easterly along the mean high water line on the easterly shore of Cook Inlet, and easterly along the southerly mean high water line of Turnagain Arm, to the point of beginning.

Thank you for your consideration.

Page -2-  
Date  
To:  
RE:

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# Kenai Peninsula Borough

## Planning Department

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### MEMORANDUM

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

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

**FROM:** Robert Ruffner, Director of Planning *RR*

**DATE:** August 11, 2022

**RE:** Ordinance 2022-41, Amending KPB Chapter 21.02 to Establish an  
Advisory Planning Commission in the Nikiski Area (Mayor)

---

The Kenai Peninsula Borough ("Borough") has established advisory planning commissions ("APCs") in several communities throughout the Borough, including in Hope, Moose Pass, Cooper Landing, Anchor Point, and Funny River. These APCs provide residents with an opportunity to participate in land use planning activities proposed for their communities and to provide recommendations to the KPB Planning Commission on land use planning and public land management issues, which may affect the existing and/or future character of their communities.

The Borough Planning Department ("Planning Department") received a letter of interest and a petition requesting that an APC be created in the Nikiski area pursuant to KPB 21.02.030. The Planning Director held a community meeting to discuss the proposed boundaries of the APC as KPB 21.02.040(B) requires. At the community meeting, the Planning Department suggested smaller boundaries because it has some concerns about the petitioned size and the ability to meaningfully represent such a large area, Particularly the west side of Cook Inlet. However, there was unanimous support at the meeting to include the entire area as it mirrors existing service areas. Thus, in the packet are two maps with different proposed boundaries from which the Assembly may choose. The petitioned map and legal description are presented in the ordinance. If the Assembly chooses to set boundaries, which do not include the west side, the Planning Department can further develop the legal description following the alternative map and prepare a substitute ordinance.

The petitioned boundaries encompass approximately 3,500,000 acres; the alternative the Planning Department presented during the community meeting is similar in size to other APCs, approximately 307,400 acres. Both options have pros and cons.

Once the APC is codified, the mayor will appoint seven residents to the APC within 90 days of the adoption of this ordinance. These appointments will be presented to the Assembly for confirmation.

Your consideration is appreciated.

# Kenai Peninsula Borough

## Planning Department

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### MEMORANDUM

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

THRU: Charlie Pierce, Borough Mayor

FROM: Robert Ruffner, Planning Director *RR*

DATE: August 23, 2022

RE: Ordinance 2022-41 An ordinance amending KPB Chapter 21.02 to establish an advisory planning commission in the Nikiski area.

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The Kenai Peninsula Borough Planning Commission reviewed the subject ordinance during their regularly scheduled August 22, 2022 meeting.

An amendment motion passed by majority vote (11-Yes, 1-No, 2-Vacant) to recommend amending the ordinance to use the alternative option (307,400 acres) for the Nikiski APC boundaries.

A motion passed by unanimous vote (12-Yes, 2-Vacant) to recommend approval, as amended, of Ordinance 2020-41.

In the ordinance, please amend the last WHEREAS statement:

WHEREAS, at its meeting held on August 22, 2022, the KPB Planning Commission recommended approval as amended.

Attached are the unapproved minutes of the subject portion of the meeting.



**ITEM E4 – Ordinance 2022-41****An ordinance amending KPB 21.02 regarding Advisory Planning Commissions, establishing an advisory planning commission in the Nikiski area.**

Staff report Planning Director Robert Ruffner.

Commissioner Horton asked Director Ruffner if the residents at the public meeting gave a reason for wanting the APC to cover such a large area. Director Ruffner replied that what he heard from the residents at the meeting was that their desired area for the APC mimics the size of the Nikiski's recreational and their fire service areas. The other reason given was that one of the first duties of an APC is to work on developing a land plan for their area. They noted that the borough does own quite a bit of land on the westside and they would like to be able to make recommendations on the use of those lands. Director Ruffner then stated that he weighs this desire against the idea that the purpose of the APC is to provide information to the planning commission on local issues.

Commissioner Slaughter noted that looking at the signatures on the petition it appears that all the individuals live within the alternative boundary area. He does not see any signatures from anyone on the westside. He then asked if there had been any outreach to the residents on the westside to see if they would be interested in being included in this APC. Director Ruffner stated that he did ask that question at the public meeting and to his knowledge no one from the westside has responded one way or another on this issue. Commissioner Slaughter then stated that he had sat on a local APC for a number of years and that he believes that the local voice that APCs provide is important. His concern is that having such a large area to cover, and with no input from anyone on the westside, there would be no local input from that area. He supports those local residents who wish to create an APC and since they all live within the alternative option; he would support the option of the smaller boundary area. Perhaps later the folks on the westside can decide to either join the Nikiski APC or start one of their own.

Commissioner Venuti asked Director Ruffner what would be the downside of having such a large area for an APC. Director Ruffner identified several potential issues. One would be sending out notifications of actions within an APC. Another is you want an APC to have credibility when commenting on things like platting actions or road vacations. That credibility comes from having locals who live and interact in the area. He raised this issue at the community meeting and several folks there responded that they did have local knowledge of the westside through their work in the oil fields and having recreational properties there.

Commissioner Martin stated what could it hurt if the commission approved their request as petitioned. Tyonek could still offer their opinion at any time as well as offer to have a resident sit on the APC. He believed that it would still be beneficial to get some local input, even if it was someone from the eastside.

Commissioner Stutzer asked if there would be any issues if at a later date the westside chose to break off and create their own APC. Director Ruffner replied yes, that could be a possibility.

Chair Brantley opened the item for public comment.

Camille Broussard; 52557 Geraldine Street, Kenai, AK 99611: Ms. Broussard spoke in support of the boundary area as it was petitioned. This large boundary area was unanimously supported by all the community members who attended the public meeting. The boundary, as petitioned, is the same size as the fire service and recreational service areas. She noted that a number of residents on the eastside have businesses or recreational property on the westside.

Heidi Covey; 49690 Two Junes Avenue, Kenai, AK 99611: Ms. Covey spoke in support of the boundary area as it was petitioned. She noted that she has been a resident of the Nikiski area for 37 years and has served on a service area board. The westside does receive funding from the fire service, senior service, recreational service and road maintenance taxes from our area. To her knowledge no one from the westside has ever served on any service area board. She noted the westside has not been excluded, they just chose not to volunteer.

Kristine Schmidt; 513 Ash Street, Kenai, AK 99611: Ms. Schmidt spoke in support of the boundary area as it was petitioned. She noted that she and her husband own property within the area of the proposed advisory planning commission. She noted that the size of the proposed area is pretty much the same as the fire, recreational, senior & road service areas. Their taxes support these services and it makes sense

to her that the advisory planning commission area would have the same boundaries.

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

**MOTION:** Commissioner Horton moved, seconded by Commissioner Staggs, to forward to the assembly a recommendation to adopt Ordinance 2022-41, amending KPB 21.02 regarding Advisory Planning Commissions, establishing an advisory planning commission in the Nikiski area.

Commissioner Stutzer stated that he was leaning towards supporting the larger boundary area since it had the most community support. However, he does have concerns whether the residents of the smaller but more populated area on the eastside could adequately provide local information on and recommendations for activities on the westside. He also noted that from public testimony that it does not appear that anyone from the westside has ever volunteered to sit on any of the other service area boards in the area so most likely serving on the APC would be no different.

Commissioner Morgan stated that she supports the alternative option. She noted that as a planning commissioner she represents a large district as do several other planning commissioners. Her district is very large and they have three APCs in the district, Cooper Landing, Hope/Sunrise & Moose Pass. They are all different communities and she doesn't believe anyone in Cooper Landing would want someone in Hope, which is across the mountain range, making recommendations for their community. It does not seem intuitive to her that Nikiski should be making decisions about communities across the water. While she has heard tonight that no one from the westside has stepped up to serve on a board, what she hasn't heard is whether or not there has been any outreach to any of the community about this proposal. She doesn't believe an advisory planning commission should be making decisions about communities they don't live in.

Commissioner Martin noted that Tyonek is not currently represented by an advisory planning commission. They are not being advised at all and at least there are folks on the eastside willing to provide some advice. He then noted APCs do not make decisions for communities they just advise. Having the westside included would provide at least some representation opposed to nothing at all.

Commissioner Slaughter asked if they move forward with the larger boundary area how many seats would there be on the APC. Could the planning commission make a recommendation that at least there be one member on the APC from the westside. The APC could actively try and recruit someone from the westside and if no one comes forward then that seat could be filled by someone on the eastside. He thinks as large as the petition boundary area is, it would be important to have someone from the westside on the APC.

Chair Brantley stated that he is in favor of the alternate smaller option. He thinks the petitioned area is too large and the smaller area is a more appropriate size. He does not agree with the argument that the APC boundaries should be the same size of the other service areas. An APC and service areas are not the same thing. An APC is about expressing local views and providing insight on a community. If you travel a distance, communities can be very different from one another. There is a great deal of distance between the east and west sides of the Nikiski service area and the communities are very different.

**AMENDMENT MOTION:** Commissioner Slaughter moved, seconded by Commissioner Horton to recommend to the Assembly to adopt the alternative boundary option (307,400 acre).

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

**AMENDMENT MOTION PASSED BY MAJORITY VOTE:**

Yes - 11	Brantley, Fikes, Gillham, Hooper, Horton, Morgan, Slaughter, Staggs, Stutzer, Tautfest, Venuti
No - 1	Martin

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

**MOTION AS AMENDED PASSED BY UNANIMOUS VOTE:**

Yes - 12	Brantley, Fikes, Gillham, Hooper, Horton, Martin, Morgan, Slaughter, Staggs, Stutzer, Tautfest, Venuti
No - 0	



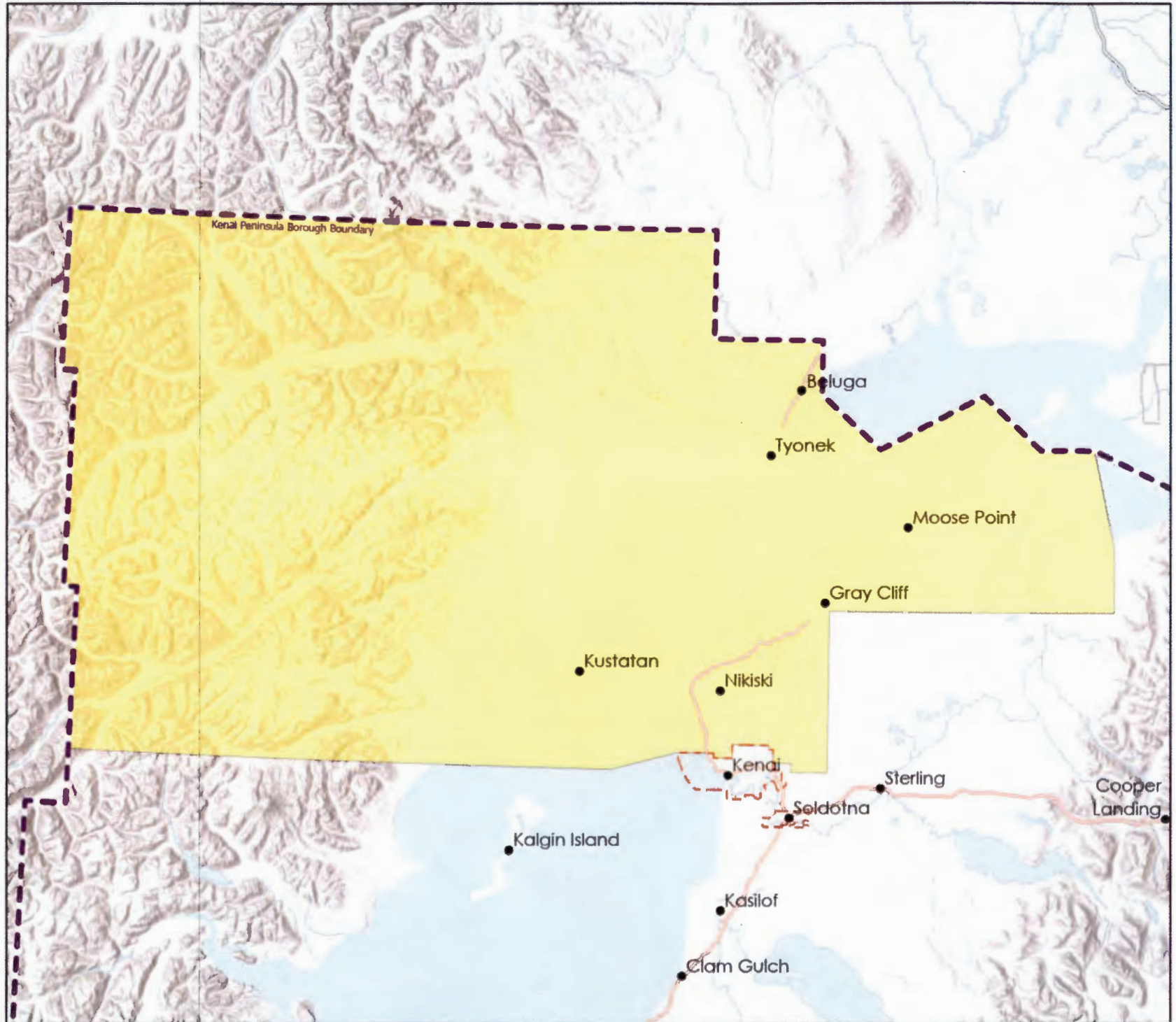


Proposed  
Boundary of  
Nikiski  
Advisory  
Planning  
Commission:

Petitioner  
Request



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





Proposed  
Boundary of  
Nikiski  
Advisory  
Planning  
Commission:

Alternative  
Option



0 2.5 5  
Miles

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



**Summary statistics for all Advisory Planning Commissions compared to Nikiski  
as petitioned and an Alternative**

<b>Advisory Planning Commission</b>	<b>Acreage</b>
MOOSE PASS	208,029
ANCHOR POINT	81,946
SUNRISE	2,477
HOPE	1,505
COOPER LANDING	177,177
FUNNY RIVER	14,000
KACHEMAK BAY	262,776
KALIFORNSKY (inactive)	45,790
<b>Nikiski (Petitioned/ Proposed)</b>	<b>3,500,894</b>
Nikiski alt.	307,410

From: Camille Broussard <chuber907@gmail.com>

Sent: Thursday, May 05, 2022 12:41 PM

To: Wastell, Pam <pwastell@kpb.us>; Pierce, Charlie <CPierce@kpb.us>

Cc: john@empireconsulting.co

Subject: <EXTERNAL-SENDER>Letter of Interest for Nikiski Advisory Planning Commission

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

Good Afternoon Mayor Pierce,

I am interested in creating an advisory planning commission in Nikiski with the proposed boundary area being the established Nikiski Fire Service Area. As per code 21.02.030 this represents the letter of interest. I also volunteer to be the coordinator for this effort. I look forward to working with you and receiving the documents for the petition.

Thank you,

Camille Broussard

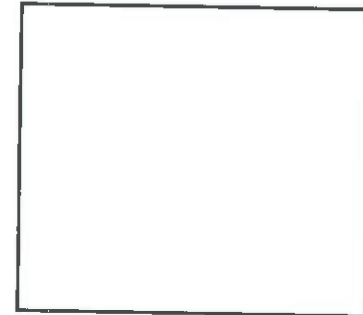
907-420-4973



Petition of Interest  
Kenai Peninsula Borough  
Planning Department

144 North Binkley Street  
Soldotna, Alaska 99669-7599

Phone: (907) 714-2200  
Fax: (907) 714-2395



FOR OFFICIAL USE ONLY

**Submission Deadline: August 10, 2022** (to be completed by KPB staff)

This form is intended to establish interest in the creation of an advisory planning commission in the area of the Kenai Peninsula Borough commonly known as:

**Nikiski**

The "letter of interest" submitted to the Mayor on May 5, 2022 designated Camille Broussard, 52557 Geraldine St, Kenai, Alaska, 99611 as the coordinator.

The petition deadline is 90 days from the date this form is sent to the coordinator. Sent on: 5/10/2022

(to be completed by KPB staff)

The proposed boundary is provided on the **attached map** and is described as: \_\_\_\_\_

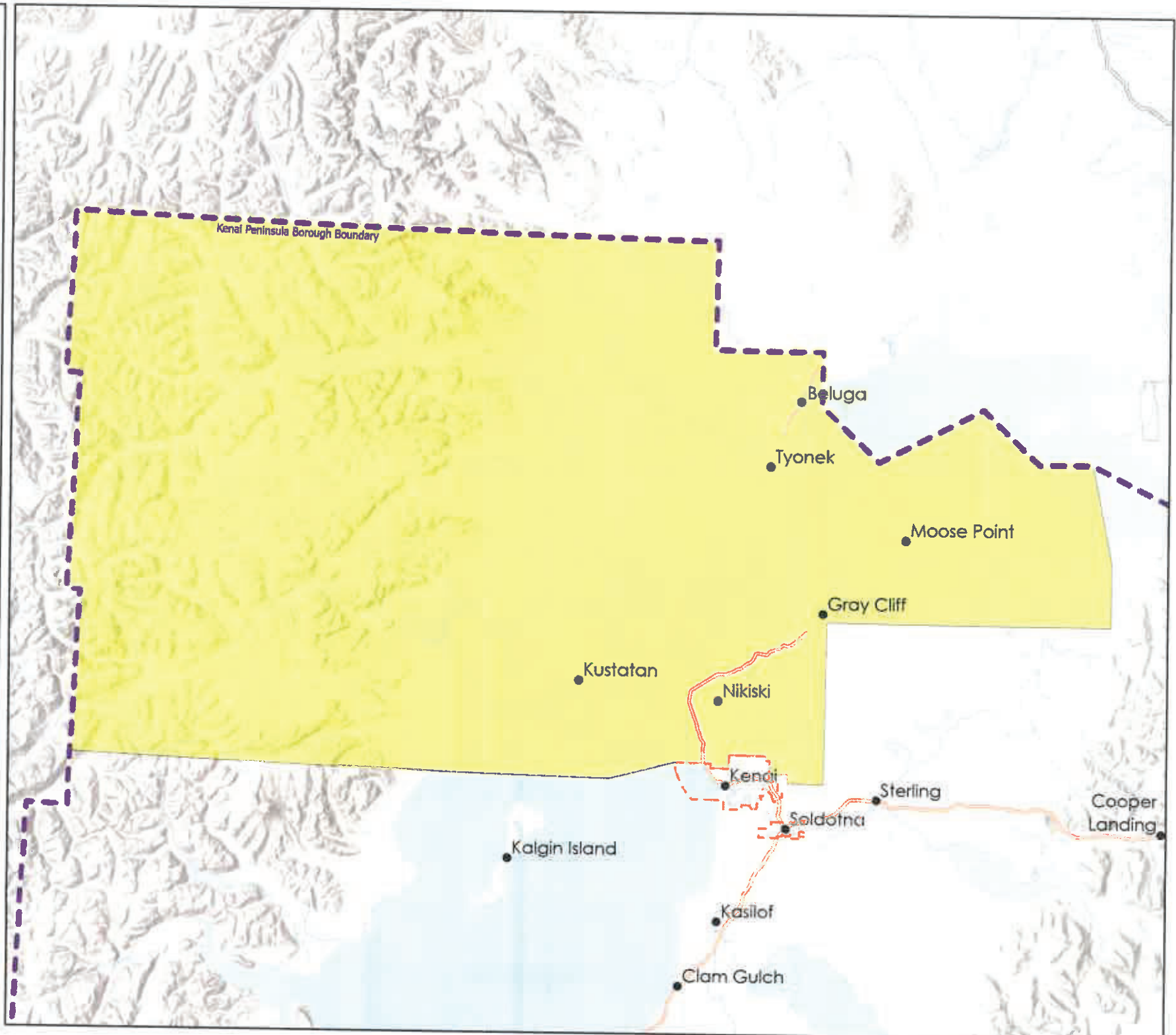
NIKISKI FIRE SERVICE AREA - PLEASE SEE ATTACHED DESCRIPTION

KPB 21.02.030





Proposed  
Boundary of  
Nikiski  
Advisory  
Planning  
Commission



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




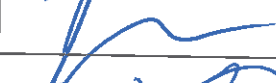










**§§** 6.12.010. - Established—Boundaries.

There is established a service area within the borough designated the "Nikiski Fire Service Area," including that portion of the borough described as follows:




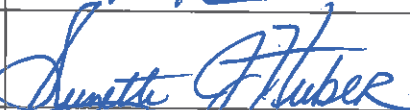









- Commencing at the township line between T5N and T6N R17W S.M., and the mean high water line on the westerly shore of Cook Inlet;
- Thence westerly along the township line between T5N and T6N to the westerly boundary of the Kenai Peninsula Borough;
- Thence northerly and easterly along the boundary of the Kenai Peninsula Borough through Cook Inlet to the protracted northeast corner of T11N R5W in Turnagain Arm;
- Thence southeasterly to the intersection of the southerly mean high water line of Turnagain Arm and the 150th meridian west of Greenwich within T10N R4W S.M.;
- Thence southerly along the 150th meridian to the township line between T8N and T9N R4W;
- Thence westerly along the township line between T8N and T9N to the northwest corner of T8N R9W S.M.;
- Thence southerly along the range line between R9W and R10W to the southeast corner of T6N R10W S.M.;
- Thence westerly along the township line between T5N and T6N to the southeast corner of Section 32 T6N R10W;
- Thence northerly along the section line between Sections 32 and 33 to the northeast corner of Section 32;
- Thence westerly along the section line to the northwest corner of Section 31 T6N R10W on the corporate boundary of the city of Kenai;
- Thence northerly and westerly along the corporate boundary of the city of Kenai to the intersection with the mean low water line of Cook Inlet and the section line between Sections 23 and 26 T6N R12W S.M.;
- Thence westerly along the section line extended three miles into Cook Inlet;
- Thence southwesterly to the protracted southeast corner of T6N R14W in Cook Inlet;
- Thence westerly along the protracted township line between T5N and T6N to the mean high water line on the westerly shore of Cook Inlet the true point of beginning.

(Ord. No. 93-29, § 1(part), 1993; Ord. No. 82-13, § 1, 1982; Ord. No. 77-59 (part), 1977; Ord. No. 74-55, § 1(part), 1974; Ord. No. 69-13, § 1(part), 1969; Ord. No. 69-12, § 1(part), 1969; KPC § 27.25.020(a))



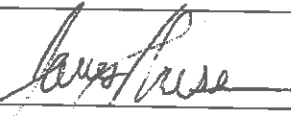



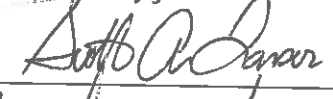

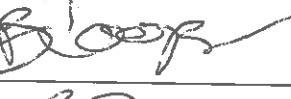

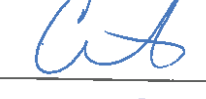



# Petition of Interest to Form an Advisory Planning Commission

	Printed Name	Signature	Residence Address	Verifier Voter Number, Date of Birth or Last 4 SSN
1.	Heidi Covey		49690 Two Junes Ave	
2.	JASPER COVEY		49690 two Junes Ave	
3.	John Quirk		46865 Lake St	
4.	Amber Douglas		51345 Earl Dr	
5.	Jonathan Douglas		51345 Earl Dr.	
6.	Jakelynn Oliva		51155 Island Lake Rd	
7.	Ryann Broussard		52557 Gerendine St	
8.	Daniel L. Gregory		47581 <sup>Douglas</sup> LANE	
9.	Joanne Hardesty		48271 Wild Rose Lane	
10.	WAYNE OBLIZ		51535 BLOCKADE GLACIER R.	
11.	Michael A. Peck		53687 Ray Ct	
12.	STACY A. OLIVER 		52360 SARATOGA ST NIKISKI 29685	

# Petition of Interest to Form an Advisory Planning Commission


	Printed Name	Signature	Residence Address	Verifier Voter Number, Date of Birth or Last 4 SSN
13.	Kyle Rogers		52835 Craig ST	
14.	Marissa Rogers		52835 Craig ST	
15.	Suzette Huber		59368 Kenai Spur Hwy	
16.	Paul Huber		59368 KENAI SPUR	
17.	Gordon Huber		59368 Kenai Spur Hwy	
18.	Bo Wheeler		c. 43640 Kenai Spur Hwy	
19.	Scott Rucker		52092 Merrill Ave.	
20.	Camille Broussard		52557 Geraldine St.	
21.	Amanda Abel		52890 Kingery Rd	
22.	Warren Huber		59368 Kenai Spur Hwy	
23.	Taylor McLaugh		53080 Tenakee Loop Nikiski AK	
24.	Briana Wuzla		50138 McClatchy Hwy Kenai/Nikiski 99611	

# Petition of Interest to Form an Advisory Planning Commission

	Printed Name	Signature	Residence Address	Verifier Voter Number, Date of Birth or Last 4 SSN
25.	Margaret Cress		51650 Josie St Kenai, AK 99611	
26.	James Cress		51650 Josie St Kenai, AK 99611	
27.	Jeffrey Lattatt		51237 Holt Lamplight Rd N. Kiski, AK 99635	
28.	Rose Lattatt		51237 Holt Lamplight Rd, N. KISKI, AK 99635	
29.	Steve Henry		50941 Kenai Spur Hwy Kenai 99611 AK	
30.	Scott Larson		52090 MARIE AVENUE KENAI, AK 99611	
31.	Tamara Larson		52090 Marie ave	
32.	Breanna Cooper		49735 Kotsina ave	
33.	Corin Cooper		49735 Kotsina St.	
34.	Constance Nicks		46180 Birch Lane	
35.	Tiffany Wilkes		50192 Silverspring Ln	
36.	Matthew Tirado		50941 Kenai Spur Hwy #1	



# Petition of Interest to Form an Advisory Planning Commission

	Printed Name	Signature	Residence Address	<b>Verifier</b> Voter Number, Date of Birth or Last 4 SSN
37.	Ameze Carpenter	Ameze Carpenter	51540 Eagle Ave Kenai / Nikiski	
38.	Ben Carpenter	[Signature]	51540 Eagle Ave Kenai / Nikiski	
39.	Cassey McClure	Cassey [Signature]	52101 Lucille Dr Kenai / Nikiski	
40.	Beau Broussard	[Signature]	52211 Lucille Dr Kenai / Nikiski	
41.	Alexa McClure	[Signature]	52211 Lucille Dr Kenai / Nikiski	
42.	Michael Broussard	Michael Broussard	52211 Lucille Dr Kenai	
43.	Bonnie L Wuerger	Bonnie L Wuerger	50138 McGahan Ridge Trl Kenai / Nikiski 99611	
44.	STEVEN R. WUERGLER	[Signature]	50138 MCGAHAN RIDGE TRI KENAI / NIKISKI 99611	
45.	Leah M. Jackson	Leah M. Jackson	52500 Leah St. Kenai, AK 99611	
46.	Tony D. Jackson	[Signature]	52500 Leah St Kenai AK 99611	
47.				
48.				



02022-41  
9/20/22

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

**CC:** Charlie Pierce, Mayor

**FROM:** Mrs. Camille Broussard, Petitioner/Coordinator

**DATE:** September 20, 2022

**RE:** Nikiski APC - Ordinance 2022-41

I come in front of this Body to formally object to the position taken by the KPB Planning Commission regarding the boundaries of the Nikiski APC.

The Planning Director had recommended cutting down the boundaries in his August 11, 2022 memo concerning this ordinance under consideration and then also voiced his recommendation at the August 22, 2022 KPB Planning Commission meeting. They then voted to amend the boundaries and it passed.

The Nikiski community strongly objects to the amended boundaries. We voiced our objections at that meeting. At a Community Meeting held on July 19<sup>th</sup>, 2022 by the Planning Department, there was unanimous support to include the entire area as it was petitioned for.

The reason is that we are a “community in whole” in our Assembly District 3, in our School Board District, in our Fire Service Board Area, in our Senior Service Board Area, and in our Recreation Service Board Area. Our boundary elements unite us as a community. The **boundary elements** that were petitioned for are identical to our Fire Service Board Area. The other areas are similar or even encompass what was petitioned. These boundaries are an established standard of representation.

To suggest that from a geographical perspective the area is “too large” or from a service perspective the area won’t be represented, goes against all the other respective Borough established “boards” that have worked for years to represent our community needs.

I strongly recommend that Ordinance 2022-41 reflect the boundaries as originally submitted which included the West side.

Introduced by:	Mayor, Johnson
Date:	12/07/21
Hearing:	01/18/22
Action:	Postponed as Amended to 02/01/22
Vote:	5 Yes, 3 No, 1 Absent
Date:	02/01/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH  
ORDINANCE 2021-41**

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

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

- WHEREAS,** Goal 1 of the Mining and Minerals Processing section of the 1990 Kenai Peninsula Borough Coastal Management Program is to provide opportunities to explore, extract and process minerals, sand and gravel resources, while protecting environmental quality and other resource users; and
- WHEREAS,** an assembly subcommittee was formed in 2005 to review the material site code; and
- WHEREAS,** Ordinance 2006-01 (Substitute) codified as KPB 21.29 was adopted in 2006 after consideration of the subcommittee's report; and
- WHEREAS,** the planning department has been administering Ordinance 2006-01 (Substitute), codified as KPB 21.29 for 13 years; and
- WHEREAS,** KPB 21.25.040 requires a permit for the commencement of certain land uses within the rural district of the Kenai Peninsula Borough; and
- WHEREAS,** the planning department has recognized that certain provisions of the material site ordinance could be better clarified for the operators, public, and staff; and
- WHEREAS,** the planning commission and planning department received comments expressing concerns about dust, noise, safety, and aesthetics; and
- WHEREAS,** approximately 253 registered prior existing use material sites and approximately 99 conditional land use permits for material sites have been granted since 1996;
- WHEREAS,** the planning department receives numerous complaints regarding unreclaimed parcels registered as nonconforming prior existing material sites which have not been regulated by KPB; and
- WHEREAS,** the assembly established a material site work group by adoption of Resolution 2018-004 (Substitute) to engage in a collaborative discussion involving the public and industry to make recommendations regarding the material site code; and
- WHEREAS,** assembly Resolution 2018-025 extended the deadline for the final report to be submitted to the assembly, administration and planning commission to April 30, 2019; and
- WHEREAS,** certain additional conditions placed on material site permits would facilitate a reduction in the negative secondary impacts of material sites, e.g. dust, noise, safety, and unsightliness of material sites; and
- WHEREAS,** at its regularly scheduled meeting of November 12, 2019, the planning commission recommended approval by unanimous consent;

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

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

**21.25.030. - Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Correctional community residential center (CCRC)* means a community residential center, other than a correctional institution, for the short-term or temporary detention of prisoners in transition from a correctional institution, performing restitution, or undergoing rehabilitation or recovery from a legal infirmity. CCRCs may not be used for detention of prisoners who pose a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision. The determination of whether a prisoner poses a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision shall be made by the commissioner of corrections for state prisoners and the United States Attorney General, or the U.S. Director of Bureau of Prisons for federal prisoners.

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

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

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

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

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

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

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

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

*Multi-purpose senior center* is a facility where persons 60 years of age or older are provided with services and activities suited to their particular needs. The



services and activities may include, but are not limited to, health examinations, legal assistance, recreation programs, general social activities, telephone reassurance programs, nutrition classes, meals at minimum cost, counseling, protective services, programs for shut-ins and education programs, and that complies with Alaska Statutes 47.60.010—47.60.090, as currently written or hereafter amended.

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

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

*Prisoner* means:

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

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

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

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

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

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

*Stable condition* means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of

renewable resources on the site within a reasonable period of time by natural processes.

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

*Topsoil* means material suitable for vegetative growth.

*Vicinity* means the same as the area of notification.

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

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

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

#### **CHAPTER 21.29. MATERIAL SITE PERMITS**

##### **21.29.010. Material extraction exempt from obtaining a permit.**

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

**21.29.020. Material extraction and activities requiring a permit.**

- A. *Counter permit.* A counter permit is required for material extraction which disturbs no more than 2.5 cumulative acres and does not enter the water table. Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension.
- B. *Conditional land use permit.* A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. A CLUP is required for materials processing. A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPS and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.

**21.29.030. Application procedure.**

- A. In order to obtain a counter permit or CLUP, an applicant shall first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application shall include the following items:
  - 1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
  - 2. Expected life span of the material site;
  - 3. A buffer plan consistent with KPB 21.29.050(A)(2);
  - 4. Reclamation plan consistent with KPB 21.29.060;
  - 5. The depth of excavation;
  - 6. Type of material to be extracted and type of equipment to be used;
  - 7. Any voluntary permit conditions the applicant proposes. Failure to include a proposed voluntary permit condition in the application does not preclude the applicant from proposing or agreeing to voluntary permit conditions at a later time;

8. Surface water protection measures, if any, for adjacent properties designed by a civil engineer, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;
9. A site plan and field verification prepared by a professional surveyor licensed and registered in the State of Alaska, including the following information:
  - a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
  - b. Proposed buffers consistent with KPB 21.29.050(A)(2), or alternate buffer plan;
  - c. Identification of all encumbrances, including, but not limited to easements;
  - d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to the issuance of the material site permit;
  - e. Anticipated haul routes;
  - f. Location and [DEPTH] elevation of test holes, and depth of groundwater, if encountered between May and December. At least one test hole per ten acres of excavated area is required to be dug. The test holes shall be at least four feet below the proposed depth of excavation;
  - g. Location of wells of adjacent property owners within 300 feet of the proposed parcel boundary;
  - h. Location of any water body on the parcel, including the location of any riparian wetland as determined by ["WETLAND MAPPING AND CLASSIFICATION OF THE KENAI LOWLAND, ALASKA" MAPS CREATED BY THE KENAI WATERSHED FORUM] best available data;
  - [I. SURFACE WATER PROTECTION MEASURES FOR ADJACENT PROPERTIES, INCLUDING THE USE OF DIVERSION CHANNELS, INTERCEPTION DITCHES, ON-SITE COLLECTION DITCHES, SEDIMENT PONDS AND TRAPS, AND SILT FENCE; PROVIDE DESIGNS FOR SUBSTANTIAL STRUCTURES; INDICATE WHICH

STRUCTURES WILL REMAIN AS PERMANENT FEATURES AT THE CONCLUSION OF OPERATIONS, IF ANY;]

[J]i. Location of any processing areas on parcel, if applicable;

[K]j. North arrow;

[L]k. The scale to which the site plan is drawn;

[M]l. Preparer's name, date and seal;

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

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

#### **21.29.040. Standards for sand, gravel or material sites.**

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:

1. Protects against the lowering of water sources serving other properties;
2. Protects against physical damage to [OTHER] adjacent properties;
3. [MINIMIZES] Protects against off-site movement of dust;
4. [MINIMIZES] Protects against noise disturbance to other properties;
5. [MINIMIZES] Protects against visual impacts of the material site; [AND]
6. Provides for alternate post-mining land uses[.];
7. Protects Receiving Waters against adverse effects to fish and wildlife habitat;
8. Protects against traffic impacts; and

9. Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.

**21.29.050. Permit conditions.**

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

1. [PARCEL]Permit boundaries. [ALL BOUNDARIES OF THE SUBJECT PARCEL] The buffers and any easements or right-of-way abutting the proposed permit area shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter. Field verification and staking will require the services of a professional land surveyor. Stakes shall be in place [AT TIME OF APPLICATION] prior to issuance of the permit.

- [2. *BUFFER ZONE.* A BUFFER ZONE SHALL BE MAINTAINED AROUND THE EXCAVATION PERIMETER OR PARCEL BOUNDARIES. WHERE AN EASEMENT EXISTS, A BUFFER SHALL NOT OVERLAP THE EASEMENT, UNLESS OTHERWISE CONDITIONED BY THE PLANNING DIRECTOR OR PLANNING COMMISSION.

- A. THE BUFFER ZONE SHALL PROVIDE AND RETAIN A BASIC BUFFER OF:

- I. 50 FEET OF UNDISTURBED NATURAL VEGETATION, OR

- II. A MINIMUM SIX-FOOT EARTHEN BERM WITH AT LEAST A 2:1 SLOPE, OR

- III. A MINIMUM SIX-FOOT FENCE.

- B. A 2:1 SLOPE SHALL BE MAINTAINED BETWEEN THE BUFFER ZONE AND EXCAVATION FLOOR ON ALL INACTIVE SITE WALLS. MATERIAL FROM THE AREA DESIGNATED FOR THE 2:1 SLOPE MAY BE REMOVED IF SUITABLE, STABILIZING MATERIAL IS REPLACED WITHIN 30 DAYS FROM THE TIME OF REMOVAL.

- C. THE PLANNING COMMISSION OR PLANNING DIRECTOR SHALL DESIGNATE ONE OR A COMBINATION OF THE ABOVE AS IT DEEMS APPROPRIATE. THE VEGETATION AND FENCE SHALL BE OF SUFFICIENT HEIGHT AND DENSITY TO PROVIDE VISUAL AND NOISE SCREENING OF THE PROPOSED USE AS DEEMED



APPROPRIATE BY THE PLANNING COMMISSION OR PLANNING DIRECTOR.

- D. BUFFERS SHALL NOT CAUSE SURFACE WATER DIVERSION WHICH NEGATIVELY IMPACTS ADJACENT PROPERTIES OR WATER BODIES. SPECIFIC FINDINGS ARE REQUIRED TO ALTER THE BUFFER REQUIREMENTS OF KPB 21.29.050(A)(2)(A) IN ORDER TO MINIMIZE NEGATIVE IMPACTS FROM SURFACE WATER DIVERSION. FOR PURPOSES OF THIS SECTION, SURFACE WATER DIVERSION IS DEFINED AS EROSION, FLOODING, DEHYDRATION OR DRAINING, OR CHANNELING. NOT ALL SURFACE WATER DIVERSION RESULTS IN A NEGATIVE IMPACT.
- E. AT ITS DISCRETION, THE PLANNING COMMISSION MAY WAIVE BUFFER REQUIREMENTS WHERE THE TOPOGRAPHY OF THE PROPERTY OR THE PLACEMENT OF NATURAL BARRIERS MAKES SCREENING NOT FEASIBLE OR NOT NECESSARY. BUFFER REQUIREMENTS SHALL BE MADE IN CONSIDERATION OF AND IN ACCORDANCE WITH EXISTING USES OF ADJACENT PROPERTY AT THE TIME OF APPROVAL OF THE PERMIT. THERE IS NO REQUIREMENT TO BUFFER THE MATERIAL SITE FROM USES WHICH COMMENCE AFTER THE APPROVAL OF THE PERMIT.]

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

- a. A buffer area of a maximum of 100 feet shall be established between the area of excavation and the parcel boundaries. The buffer area may include one or more of the following: undisturbed natural vegetation, a minimum six-foot fence, a minimum six-foot earthen berm with at least a 2/1 slope or a combination thereof.
- b. A 2:1 slope shall be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
- c. Where an easement exists, a buffer shall not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable.
- d. The vegetation and fence shall be of sufficient height and density to provide visual and noise screening of the proposed

use as deemed appropriate by the planning commission or the planning director.

- e. The buffer area may be reduced where the planning commission or planning director, as applicable, has approved an alternate buffer plan. The alternate buffer plan must consist of natural undisturbed vegetation, a minimum six-foot berm, or a minimum six-foot fence or a combination thereof; unless the permittee proposes another solution approved by the planning commission or planning director, as applicable, to meet this condition.
- f. The buffer requirements may be waived by the planning commission or planning director, as applicable, where the topography of the property or the placement of natural barriers makes screening not feasible or unnecessary.
- g. There is no requirement to buffer a material site from uses that commence after approval of the permit.
- h. When a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required.

- 3. *Processing.* In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of [OF ADJACENT PROPERTY AT THE TIME] the properties in the vicinity at the time of approval of the permit.

4. *Water source separation.*

- a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.
- b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation [FROM]between extraction operations and the seasonal high water table be maintained.
- c. All CLUPS shall be issued with a condition which requires that a [TWO] four-foot vertical separation [FROM]between

extraction operations and the seasonal high water table be maintained.

- d. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.
5. *Excavation in the water table.* Excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission based on the following:
- a. Certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.
  - b. The installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate, and water elevation.
  - c. Groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three-month intervals by a qualified independent civil engineer or professional hydrogeologist, for at least one year prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
  - d. Operations shall not breach an aquifer-confining layer.
6. *Waterbodies.*
- a. An undisturbed buffer shall be left and no earth material extraction activities shall take place within [100] 200 linear feet from excavation limits and the ordinary high water level of surface water bodies such as a lake, river, stream, [OR OTHER WATER BODY, INCLUDING] riparian wetlands and mapped floodplains as defined in KPB 21.06. This regulation shall not apply to man-made waterbodies being constructed during the course of the materials extraction activities. In order to prevent

discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.

- b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.
7. *Fuel storage.* Fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
8. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads as required by KPB 14.40.175 and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
9. *Subdivision.* Any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit. The planning director may issue a written exemption from the amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a material site and all original permit conditions can be met.
10. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
11. *Hours of operation.* [ROCK CRUSHING EQUIPMENT SHALL NOT BE OPERATED BETWEEN 10:00 P.M. AND 6:00 A.M.]
  - a. Processing equipment shall not be operated between 7:00 p.m. and 6:00 a.m.
  - b. The planning commission may grant exceptions to increase the hours of operation and processing based on surrounding land uses, topography, screening the material site from properties in the vicinity and conditions placed on the permit by the planning commission to mitigate the noise, dust and visual impacts caused by the material site.

12. *Reclamation.*

- a. Reclamation shall be consistent with the reclamation plan approved by the planning commission or planning director as appropriate in accord with KPB 21.29.060.
- b. [AS A CONDITION OF ISSUING THE PERMIT, THE APPLICANT SHALL SUBMIT A RECLAMATION PLAN AND POST A BOND TO COVER THE ANTICIPATED RECLAMATION COSTS IN AN AMOUNT TO BE DETERMINED BY THE PLANNING DIRECTOR. THIS BONDING REQUIREMENT SHALL NOT APPLY TO SAND, GRAVEL OR MATERIAL SITES FOR WHICH AN EXEMPTION FROM STATE BOND REQUIREMENTS FOR SMALL OPERATIONS IS APPLICABLE PURSUANT TO AS 27.19.050.] The applicant shall operate the material site consistent with the approved reclamation plan and provide bonding pursuant to 21.29.060(B). This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.

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

14. [~~VOLUNTARY~~]Volunteered *permit conditions.* Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission for CLUPs or the planning director for counter permits. Such conditions must be consistent with the standards set forth in KPB 21.29.040(A). Planning commission approval of such conditions shall be contingent upon a finding that the conditions will be in the best interest of the borough and the surrounding property owners. [~~VOLUNTARY~~] Volunteered permit

conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in [VOLUNTARY] volunteered permit conditions may be proposed [AT] by permit [RENEWAL OR AMENDMENT] modification.

15. *Signage.* For permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access, whichever is more visible. Sign dimensions shall be no more than 15" by 15" and must contain the following information: the phrase "Permitted Material Site" along with the permittee's business name and a contact phone number.
16. *Appeal.* No clearing of vegetation shall occur within the 100-foot maximum buffer area from the permit boundary nor shall the permit be issued or operable until the deadline for the appeal, pursuant to KPB 21.20, has expired.
17. *Sound level.*
  - a. No sound resulting from the materials extraction activities shall create a sound level, when measured at or within the property boundary of the adjacent land, that exceeds 75 dB(A).
  - b. For any sound that is of short duration between the hours of 7 a.m. and 7 p.m. the levels may be increased by:
    - i. Five dB(A) for a total of 15 minutes in any one hour; or
    - ii. Ten dB(A) for a total of five minutes in any hour; or
    - iii. Fifteen db(A) for a total of one and one-half minutes in any one-hour period.
  - c. At its discretion, the planning commission or planning director, as applicable, may reduce or waive the sound level requirements on any or all property boundaries. Sound level requirements shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
  - d. Mandatory condition KPB 21.29.050(A)(17) shall expire 365 days from adoption of KPB 21.29.050(A)(17) unless extended or modified by the assembly.

18. Reverse signal alarms. Reverse signal alarms, used at the material site on loaders, excavators, and other earthmoving equipment shall be more technically advanced devices; such as, a multi-frequency “white noise” alarms rather than the common, single (high-pitch) tone alarms. At its discretion, the planning commission or planning director, as applicable, may waive this requirement or a portion of this requirement. The waiver of this requirement shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
19. Ingress and egress. The planning commission or planning director may determine the points of ingress and egress for the material site. The permittee is not required to construct haul routes outside the parcel boundaries of the material site. Driveway authorization must be acquired, from either the state through an “Approval to Construct” or a borough road service area as appropriate, prior to issuance of a material site permit when accessing a public right-of-way.
20. Dust suppression. Dust suppression shall be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on haul routes. Based on surrounding land uses the planning commission or planning director, as applicable, may waive or reduce the requirement for dust suppression on haul routes.
21. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8) must be approved by a licensed civil engineer.
22. Groundwater elevation. All material sites must maintain one monitoring tube per ten acres of excavated area four feet below the proposed excavation.
23. Setback. Material site excavation areas shall be 250-feet from the property boundaries of any local option zoning district, existing public school ground, private school ground, college campus, child care facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation shall be included in the 250-foot setback.

#### **21.29.055. Decision.**

The planning commission or planning director, as applicable, shall approve permit applications meeting the mandatory conditions or shall disapprove permit applications that do not meet the mandatory conditions. The decision shall include written findings supporting the decision, and when applicable, there shall be written findings supporting any site-specific alterations to the mandatory condition as



specifically allowed by KPB 21.29.050(A)(2)(a), (2)(c), (2)(d), (2)(e), (2)(g), (3), (4)(d), (5), (11)(b), (12), (14), (17)(c), (18), (19), and (20) and as allowed for the KPB 21.29.060 reclamation plan.

#### **21.29.060. Reclamation plan.**

- A. All material site permit applications require an overall reclamation plan along with a five-year reclamation plan. A site plan for reclamation shall be required including a scaled drawing with finished contours. A five-year reclamation plan must be submitted with a permit extension request.
- B. The applicant shall revegetate with a non-invasive plant species and reclaim all disturbed land [UPON EXHAUSTING THE MATERIAL ON-SITE, OR WITHIN A PRE-DETERMINED TIME PERIOD FOR LONG-TERM ACTIVITIES, SO AS TO LEAVE THE LAND IN A STABLE CONDITION. RECLAMATION MUST OCCUR FOR ALL EXHAUSTED AREAS OF THE SITE EXCEEDING FIVE ACRES BEFORE A FIVE-YEAR RENEWAL PERMIT IS ISSUED, UNLESS OTHERWISE REQUIRED BY THE PLANNING COMMISSION. IF THE MATERIAL SITE IS ONE ACRE OR LESS IN SIZE AND HAS BEEN GRANTED A CLUP DUE TO EXCAVATION IN THE WATER TABLE, RECLAMATION MUST BE PERFORMED AS SPECIFIED BY THE PLANNING COMMISSION OR PLANNING DIRECTOR IN THE CONDITIONAL USE OR COUNTER PERMIT] within the time period approved with the reclamation plan so as to leave the land in a stable condition. Bonding shall be required at \$2,000.00 per acre for all acreage included in the current five-year reclamation plan. In the alternative, the planning director may accept a civil engineer's estimate for determining the amount of bonding. If the applicant is bonded with the state, the borough's bonding requirement is waived. Compliance with reclamation plans shall be enforced under KPB 21.50.
- C. The following measures must be considered in the [PREPARING] preparation, approval and [IMPLEMENTING] implementation of the reclamation plan, although not all will be applicable to every reclamation plan.
  - 1. Topsoil that is not promptly redistributed to an area being reclaimed will be separated and stockpiled for future use. [THIS MATERIAL WILL BE PROTECTED FROM EROSION AND CONTAMINATION BY ACIDIC OR TOXIC MATERIALS AND PRESERVED IN A CONDITION SUITABLE FOR LATER USE.]
  - 2. The area will be backfilled, graded and recontoured using strippings, overburden, and topsoil [TO A CONDITION THAT ALLOWS FOR THE REESTABLISHMENT OF RENEWABLE RESOURCES ON THE SITE WITHIN A REASONABLE PERIOD OF TIME. IT WILL BE STABILIZED TO A CONDITION THAT WILL ALLOW SUFFICIENT MOISTURE FOR

REVEGETATION] so that it will be stabilized to a condition that will allow for the revegetation as required by KPB 21.29.060(B).

3. [SUFFICIENT QUANTITIES OF STOCKPILED OR IMPORTED TOPSOIL WILL BE SPREAD OVER THE RECLAIMED AREA TO A DEPTH OF FOUR INCHES TO PROMOTE NATURAL PLANT GROWTH THAT CAN REASONABLY BE EXPECTED TO REVEGETATE THE AREA WITHIN FIVE YEARS. THE APPLICANT MAY USE THE EXISTING NATURAL ORGANIC BLANKET REPRESENTATIVE OF THE PROJECT AREA IF THE SOIL IS FOUND TO HAVE AN ORGANIC CONTENT OF 5% OR MORE AND MEETS THE SPECIFICATION OF CLASS B TOPSOIL REQUIREMENTS AS SET BY ALASKA TEST METHOD (ATM) T-6.] The [MATERIAL] topsoil used for reclamation shall be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by a licensed engineer.
4. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation shall be removed from the site, buried or burned. Topsoil and other organics will be spread on the backfilled surface to inhibit erosion and promote natural revegetation.
5. [PEAT AND T]Topsoil mine operations shall ensure a minimum of [TWO] four inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).
6. Ponding may be used as a reclamation method as approved by the planning commission.

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

#### **21.29.070. Permit extension and revocation.**

- A. Conditional land use permittees must submit a request in writing for permit extension every five years after the permit is issued. Requests for permit extension must be made at least 30 days prior to permit expiration. Counter permittees must submit any request for a 12-month extension at least 30 days prior to the expiration of the original 12-month permit period.
- B. A permit extension certificate for a CLUP may be granted by the planning director after 5 years, and after one year for a counter permit where no modification to operations or conditions are proposed.

- C. Permit extension may be denied if: (1) reclamation required by this chapter and the original permit has not been performed; (2) the permittee is otherwise in noncompliance with the original permit conditions; or (3) the permittee has had a permit violation in the last two years and has not fulfilled compliance requests.
- D. A modification application shall be processed pursuant to KPB 21.29.030-050 with public notice given as provided by KPB 21.25.060 when operators request modification of their permit conditions based on changes in operations set forth in the modification application.
- E. There shall be no fee for permit extensions approved by the planning director. The fee for a permit modification processed under KPB 21.29.070(D) will be the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.
- F. Failure to submit a request for extension will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KPB 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.
- G. Permits may be revoked pursuant to KPB 21.50. 21.29.080. - Permit termination.

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

#### **21.29.090. Permit modifications.**

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

#### **21.29.100. Recordation.**

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

#### **21.29.110. Violations.**

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

#### **21.29.120. Prior existing uses.**

- A. Material sites are not held to the standards and conditions of a CLUP if a prior existing use (PEU) determination was granted for the parcel in accordance with KPB 21.29.120(B). To qualify as a PEU, a parcel's use as a material site must have commenced or have been operated after May 21, 1986, and prior to May 21, 1996, provided that the subject use continues in the same location. In no event shall a prior existing use be expanded beyond the smaller of the lot, block, or tract lines as they existed on May 21, 1996. If a parcel is further subdivided after May 21, 1996, the pre-existing use may not be expanded to any lot, tract, or parcel where extraction had not occurred before or on February 16, 1999. If a parcel is subdivided where extraction has already occurred, the prior existing use is considered abandoned, and a CLUP must be obtained for each parcel intended for further material site operations. The parcel owner may overcome this presumption of abandonment by showing that the subdivision is not inconsistent with material site operation. If a parcel subject to a prior existing use is conveyed, the prior existing use survives the conveyance.
- B. Owners of sites must have applied to be registered as a prior existing use prior to January 1, 2001.
- C. [ANY PRIOR EXISTING USE THAT HAS NOT OPERATED AS A MATERIAL SITE BETWEEN MAY 21, 1996, AND MAY 21, 2011, IS CONSIDERED ABANDONED AND MUST THEREAFTER COMPLY WITH THE PERMIT REQUIREMENTS OF THIS CHAPTER. THE PLANNING DIRECTOR SHALL DETERMINE WHETHER A PRIOR EXISTING USE HAS BEEN ABANDONED. AFTER GIVING NOTICE TO THE PARCEL OWNER THAT A PEU IS CONSIDERED ABANDONED, A PARCEL OWNER MAY

PROTEST THE TERMINATION OF THE PEU BY FILING WRITTEN NOTICE WITH THE PLANNING DIRECTOR ON A FORM PROVIDED BY THE PLANNING DEPARTMENT. WHEN A PROTEST BY A PARCEL OWNER IS FILED, NOTICE AND AN OPPORTUNITY TO MAKE WRITTEN COMMENTS REGARDING PRIOR EXISTING USE STATUS SHALL BE ISSUED TO OWNERS OF PROPERTY WITHIN A ONE-HALF MILE RADIUS OF THE PARCEL BOUNDARIES OF THE SITE. THE OWNER OF THE PARCEL SUBJECT TO THE PRIOR EXISTING USE MAY SUBMIT WRITTEN INFORMATION, AND THE PLANNING DIRECTOR MAY GATHER AND CONSIDER ANY INFORMATION RELEVANT TO WHETHER A MATERIAL SITE HAS OPERATED. THE PLANNING DIRECTOR MAY CONDUCT A HEARING IF HE OR SHE BELIEVES IT WOULD ASSIST THE DECISION-MAKING PROCESS. THE PLANNING DIRECTOR SHALL ISSUE A WRITTEN DETERMINATION WHICH SHALL BE DISTRIBUTED TO ALL PERSONS MAKING WRITTEN COMMENTS. THE PLANNING DIRECTOR'S DECISION REGARDING TERMINATION OF THE PRIOR EXISTING USE STATUS MAY BE APPEALED TO THE PLANNING COMMISSION WITHIN 15 DAYS OF THE DATE OF THE NOTICE OF DECISION.]

The owner of a material site that has been granted a PEU determination shall provide proof of compliance with AS 27.19.030 – 050 concerning reclamation to the planning department no later than July 1, 2022. The proof shall consist of an Alaska Department of Natural Resources (DNR) approved reclamation plan and receipt for bonding or a letter of intent filed with DNR.

1. The planning department may request proof of continued compliance with AS 27.19.030 – 050 on an annual basis.
2. Pursuant to KPB 21.29.110 the enforcement process and remedies set forth in KPB 21.50 shall govern if the proof that the statutory requirements contained in AS 27.19.030-050 is not provided to the planning department.

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

**21.50.055. Fines.**

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

<b>CODE CHAPTER &amp; SECTION</b>	<b>VIOLATION DESCRIPTION</b>	<b>DAILY FINE</b>
KPB 20.10.030(A)	Offering land for sale without final plat approval	\$300.00
KPB 20.10.030(B)	Filing/recording unapproved subdivision/plat	\$300.00
KPB 20.10.030(C)	Violation of subdivision code or condition	\$300.00
KPB 21.05.040(C)	Violation of variance conditions	\$300.00
KPB 21.06.030(D)	Structure or activity prohibited by KPB 21.06	\$300.00
KPB 21.06.040	Failure to obtain a Development Permit/Floodplain Management	\$300.00
KPB 21.06.045	Failure to obtain a SMFDA Development Permit/Violation of SMFDA permit conditions/Floodplain Management	\$300.00
KPB 21.06.050	Violation of permit conditions/Floodplain Management	\$300.00
KPB 21.18.071	Failure to obtain staff permit/Violation of staff permit/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.072	Failure to obtain limited commercial activity permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.075	Prohibited use or structure/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.081	Failure to obtain Conditional Use Permit/Violation of Conditional Use Permit Condition/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.090	Failure to obtain prior existing use/structure permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.135(C)	Violation of emergency permit conditions/anadromous stream habitat protection	\$300.00

CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
KPB 21.25.040	Failure to Obtain a Permit/Material Site/Correctional community residential center/Concentrated Animal Feeding Operation	\$300.00
KPB 21.28.030	Violation of permit conditions/Concentrated Animal Feeding Operations	\$300.00
KPB 21.29.020	Failure to Obtain a counter permit/Material Site Permits	\$300.00
KPB 21.29.050	Violation of Conditional Land Use Permit Conditions/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
KPB 21.29.060	Violation of Reclamation Plan/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
<u>KPB 21.29.120</u>	<u>Failure to Provide Reclamation Plan and Proof of Bonding or Letter of Intent</u>	<u>\$300.00</u>
KPB 21.44.100	Violation of Pre-existing structures/Local Option Zoning	\$300.00
KPB 21.44.110(D)	Prohibited expansion of nonconforming use/Local Option Zoning	\$300.00
KPB 21.44.110(E)	Prohibited Change in Use/Local Option Zoning	\$300.00
KPB 21.44.110(G)	Violation of Conditions on Nonconforming Use/Local Option Zoning	\$300.00
KPB 21.44.130(C)(D)	Violation of Home Occupation Standards and Conditions/Local Option Zoning	\$300.00
KPB 21.44.130(F)	Disallowed Home Occupation/Local Option Zoning	\$300.00
KPB 21.44.135	Failure to file development notice	\$300.00
KPB 21.44.160(A)(B)	Prohibited use	\$300.00



<b>CODE CHAPTER &amp; SECTION</b>	<b>VIOLATION DESCRIPTION</b>	<b>DAILY FINE</b>
KPB 21.44.160(C)	Violation of Development Standards/Single Family Zoning/Local Option Zoning	\$300.00
KPB 21.44.165(A)(B)	Prohibited use	\$300.00
KPB 21.44.165(C)	Violation of Development Standards/Small Lot Residential Zoning/Local Option Zoning	\$300.00
KPB 21.44.170(A)(B)	Prohibited use	\$300.00
KPB 21.44.170(C)	Violation of Development Standards/Rural Residential District/Local Option Zoning	\$300.00
KPB 21.44.175(B)(C)	Prohibited Use	\$300.00
KPB 21.44.175(D)	Violation of Development Standards/Residential Waterfront	\$300.00
KPB 21.44.180(A)(B)	Prohibited Use	\$300.00
KPB 21.44.180(C)	Violation of Development Standards/Multi-Family Residential District/Local Option Zoning	\$300.00
KPB 21.44.190(A)(B)	Prohibited Use	\$300.00
KPB 21.44.190(C)	Violation of Development Standards/Industrial District/Local Option Zoning	\$300.00
KPB 21.46.030(b)	Failure to maintain bear-resistant garbage cans/Local option zone/Birch and Grove Ridge subdivisions Rural Residential District	\$300.00
KPB 21.50.100(F)	Removal of posted enforcement notice	\$300.00
KPB 21.50.100(G)	Violation of enforcement notice	\$1,000.00
KPB 21.50.130(I)	Violation of an enforcement order	\$1,000.00

**SECTION 4.** That this ordinance shall become effective upon its enactment.

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

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Brent Johnson, Assembly President

ATTEST:

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Johani Blankenship, MMC, Borough Clerk

Yes: Bjorkman, Derkevorkian, Elam, Tupper, Johnson

No: Chesley, Cox, Ecklund

Absent: Hibbert

**[Clerk's Note: At the 01/18/22 meeting this amendment failed 4 Yes, 4 No, 1 Absent. Notice of reconsideration was given by Mr. Elam.]**

# Kenai Peninsula Borough Assembly

## MEMORANDUM

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

**FROM:** Bill Elam, Assembly Member *BE*

**DATE:** January 18, 2022

**SUBJECT:** Elam Amendment #2 to Ordinance 2021-41, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures (Johnson, Mayor)

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

- Amend Section 2, KPB 21.29.040(A), as follows:

### **21.29.040. Standards for sand, gravel or material sites.**

- A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. ~~**[Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:]**~~ **The mandatory conditions of 21.29.050 are express conditions precedent to the granting of any conditional land use permit and after a public hearing, the planning commission must find, in writing, that through imposition of all the mandatory conditions under KPB 21.29.050 that the following standards are met:**
1. ~~**[Protects against the lowering of water sources serving other properties;]**~~ **The use is not inconsistent with the applicable comprehensive plan;**
  2. ~~**[Protects against physical damage to [other] adjacent properties;]**~~ **The use will preserve the value, spirit, character, and integrity of the surrounding area;**

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Date: January 18, 2022

RE: Elam Amendment #2 to O2021-41

3. ~~[[Minimizes] Protects against off-site movement of dust;]~~  
The applicant has met all other requirements of this chapter pertaining to the use in question;
4. ~~[[Minimizes] Protects against noise disturbance to other properties;]]~~  
That granting the permit will not be harmful to the public health, safety and general welfare; and
5. ~~[[Minimizes] Protects against visual impacts of the material site; [and]]~~  
The sufficient setbacks, lot area, buffers or other safeguards are being provided to meet the conditions listed in KPB 21.29.050.
- ~~[6. Provides for alternate post-mining land uses[.];]~~
- ~~[7. Protects Receiving Waters against adverse effects to fish and wildlife habitat;]~~
- ~~[8. Protects against traffic impacts; and]~~
- ~~[9. Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.]~~

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Cindy Ecklund, Assembly Memk <sup>1st</sup>  
Mike Tupper, Assembly Member <sup>MT</sup>

**DATE:** January 18, 2022

**SUBJECT:** Amendment to Ordinance 2021-41, Amending KPB 21.29, KPB 21.25,  
and KPB 21.50.055 Regarding Material Site Permits, Applications,  
Conditions, and Procedures (Johnson, Mayor)

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

- Amend Section 2, KPB 21.29.050(A)(2)(a), as follows:

### **21.29.050. Permit conditions.**

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

...

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

- a. A buffer area of a maximum of 100 feet shall be established between the area of excavation and the parcel boundaries. The buffer area may include one or more of the following: undisturbed natural vegetation, a minimum six-foot fence, ~~a minimum six-foot berm~~ **a minimum six-foot earthen berm with at least a 2/1 slope** or a combination thereof.

**Clerk's Note: This amendment was approved at the 01/18/22 meeting. 8 Yes, 0 No, 1 Absent**

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January 18, 2021

Re: Ecklund and Tupper Amendments to O2021-41

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- Amend Section 2, KPB Section 21.29.050(A)(2)(c), as follows:

**21.29.050. Permit conditions.**

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

...

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

**Clerk's Note: This amendment was approved at the 01/18/22 meeting. 5 Yes, 3 No, 1 Absent**

- c. Where an easement exists, a buffer shall not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable. **d. The vegetation and fence shall be of sufficient height and density to provide visual and noise screening of the proposed use as deemed appropriate by the planning commission or the planning director.**

- Amend Section 2, KPB Section 21.29.050(A)(2)(d), as follows:

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

...

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

...

- d. The buffer area may be reduced where the planning commission or planning director, as applicable, has approved an alternate buffer plan. The alternate buffer plan must consist of natural undisturbed vegetation, ~~[a minimum six-foot berm]~~, **a minimum six-foot earthen berm with at least a 2/1 slope** or a minimum six-foot fence or a combination thereof; unless the permittee proposes another solution approved by the planning

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January 18, 2021

Re: Ecklund and Tupper Amendments to O2021-41

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commission or planning director, as applicable, to meet this condition.

➤ Amend Section 2, KPB 21.29.055, as follows:

**21.29.055. Decision.**

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

The planning commission or planning director, as applicable, shall approve permit applications whereby mandatory standards under KPB 21.29.040 have been met through implementation of imposed and volunteered conditions set forth in KPB 21.29.050, or shall disapprove permit applications when the imposed and volunteered conditions do not meet the mandatory standards in KPB 21.29.040.

The decision shall include written findings detailing how the imposed and volunteered condition under KPB 21.29.050 meet, or do not meet the mandatory standards set forth in KPB 21.29.040, and evidence to support those findings. When applicable, there shall be written findings supporting any site-specific alterations to the mandatory condition as specifically allowed by KPB 21.29.050(A)(2)(a), (2)(c), (2)(d), (2)(e), (2)(g), (3), (4)(d), (5), (11)(b), (12), (14), (17)(c), (18), (19), and (20) and as allowed for the KPB 21.29.060 reclamation plan.

Your consideration of these amendments is appreciated.



Introduced by: Elam, Derkevorkian  
Substitute Introduced: 02/01/22  
O2021-41 (Mayor, Johnson) See Original Ordinance for Prior History  
Action:  
Vote:

**KENAI PENINSULA BOROUGH  
ORDINANCE 2021-41  
(ELAM, DERKEVORKIAN) SUBSTITUTE**

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

- WHEREAS,** Goal 2, Focus Area: Land Use, Objective A of the 2019 Kenai Peninsula Borough Comprehensive Plan is to establish policies to minimize land use conflicts, protect natural systems, and support individual land use freedoms; and
- WHEREAS,** Goal 2, Focus Area: Land Use, Objective A, Strategy 2 of the 2019 Comprehensive Plan is to update the Borough’s existing conditional use regulations for material extraction to better address reoccurring land use conflicts; and
- WHEREAS,** Goal 2, Focus Area: Land Use, Objective A, Strategy 2a of the 2019 Comprehensive Plan is to clarify the broad purpose of the conditional use process and clear parameters for allowable conditional uses that include reasonable, project-specific conditions that reduce impacts on surrounding use; and
- WHEREAS,** Goal 2, Focus Area: Land Use, Objective A, Strategy 2d of the 2019 Comprehensive Plan is to complete improvements to the rules guiding gravel extraction, with the goal of providing an appropriate balance between providing access to affordable materials for development and quality of life for borough residents; and
- WHEREAS,** Goal 1 of the Mining and Minerals Processing section of the 1990 Kenai Peninsula Borough Coastal Management Program is to provide opportunities to explore, extract and process minerals, sand and gravel resources, while protecting environmental quality and other resource users; and
- WHEREAS,** an assembly subcommittee was formed in 2005 to review the material site code; and
- WHEREAS,** Ordinance 2006-01 (Substitute) codified as KPB 21.29 was adopted in 2006 after consideration of the subcommittee’s report; and
- WHEREAS,** the planning department has been administering Ordinance 2006-01 (Substitute), codified as KPB 21.29 for 13 years; and

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

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

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

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

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

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

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

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

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

**21.25.030. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Correctional community residential center (CCRC)* means a community residential center, other than a correctional institution, for the short-term or temporary detention of prisoners in transition from a correctional institution, performing restitution, or undergoing rehabilitation or recovery from a legal infirmity. CCRCs may not be used for detention of prisoners who pose a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision. The determination of whether a prisoner poses a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision shall be made by the commissioner of corrections for state prisoners and the United States Attorney General, or the U.S. Director of Bureau of Prisons for federal prisoners.

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

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

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

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

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

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

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

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

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

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

*Prisoner* means:

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

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

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

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

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

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

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

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

*Topsoil* means material suitable for vegetative growth.

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

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

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

#### **CHAPTER 21.29. MATERIAL SITE PERMITS**

##### **21.29.010. Material extraction exempt from obtaining a permit.**

- A. Material extraction which disturbs an area of less than one acre that is not in a mapped flood plain or subject to 21.29.010(B), does not enter the water table, and does not cross property boundaries, does not require a permit. There will be no excavation within 20 feet of a right-of-way or within ten feet of a lot line.
- B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood

Service Area does not require a permit, however, operators subject to this exemption shall provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations.

- C. A prior existing use under KPB 21.29.120 does not require a material extraction permit, but a floodplain development permit is required for all activities within any mapped special flood hazard area.
- D. Material extraction incidental to site development does not require a permit when an approved site development plan is on file with the planning department. Site development plans are approved by the planning director and are valid for one year. The site development plan may be renewed on an annual basis subject to the planning director's approval.

#### **21.29.020. Material extraction and activities requiring a permit.**

- A. *Counter permit.* A counter permit is required for material extraction which disturbs no more than 2.5 cumulative acres and does not enter the water table. Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension.
- B. *Conditional land use permit.* A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. [A CLUP IS REQUIRED FOR MATERIALS PROCESSING.] A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPS and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling

#### **21.29.030. Application procedure.**

- A. In order to obtain a counter permit or CLUP, an applicant shall first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application shall include the following items:
  - 1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;



2. Expected life span of the material site;
3. A buffer plan consistent with KPB 21.29.050(A)(2);
4. Reclamation plan consistent with KPB 21.29.060;
5. The depth of excavation;
6. Type of material to be extracted and type of equipment to be used;
7. Any voluntary permit conditions the applicant proposes. Failure to include a proposed voluntary permit condition in the application does not preclude the applicant from proposing or agreeing to voluntary permit conditions at a later time;
8. Surface water protection measures, if any, for adjacent properties designed by a SWPPP certified individual, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;
9. A site plan prepared by the site operator and field verification prepared by a professional surveyor licensed and registered in the State of Alaska, including the following information:
  - a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
  - b. Proposed buffers consistent with KPB 21.29.050(A)(2), or alternate buffer plan;
  - c. Identification of all encumbrances, including, but not limited to easements;
  - d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to the issuance of the material site permit;
  - e. Anticipated haul routes;
  - f. Location and [DEPTH] elevation of test holes, and depth of groundwater, if encountered between May and December. At least one test hole per ten acres of excavated area is required to be dug.

- g. Location of wells of adjacent property owners within [300]  
200 feet of the proposed parcel boundary;
- h. Location of any water body on the parcel,
- [I. SURFACE WATER PROTECTION MEASURES FOR ADJACENT PROPERTIES, INCLUDING THE USE OF DIVERSION CHANNELS, INTERCEPTION DITCHES, ON-SITE COLLECTION DITCHES, SEDIMENT PONDS AND TRAPS, AND SILT FENCE; PROVIDE DESIGNS FOR SUBSTANTIAL STRUCTURES; INDICATE WHICH STRUCTURES WILL REMAIN AS PERMANENT FEATURES AT THE CONCLUSION OF OPERATIONS, IF ANY;]
- [J]i. Location of any processing areas on parcel, if applicable;
- [K]j. North arrow;
- [L]k. The scale to which the site plan is drawn;
- [M]l. Preparer's name, date
- [N]m. Field verification shall include staking the boundary of the parcel at sequentially visible intervals. The planning director may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious or staking is unnecessary.

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

#### **21.29.040. Standards for sand, gravel or material sites.**

- A. These material site regulations are intended to Minimize aquifer disturbance, road damage, physical damage to adjacent properties, dust, and noise. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:
  - 1. [PROTECTS AGAINST] Minimizes the lowering of water sources serving other properties;
  - 2. [PROTECTS AGAINST] Minimizes physical damage to [OTHER] adjacent properties;

3. Minimizes off-site movement of dust;
4. Minimizes noise disturbance to other properties;
5. [MINIMIZES VISUAL IMPACTS] Provides for alternate post-mining land uses.

**21.29.050. Permit conditions.**

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

1. [*PARCEL*]Permit boundaries. [ALL BOUNDARIES OF THE SUBJECT PARCEL] The buffers and any easements or right-of-way abutting the proposed permit area shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter. Field verification and staking will require the services of a professional land surveyor. Stakes shall be in place [AT TIME OF APPLICATION] prior to issuance of the permit.

[2. BUFFER ZONE. A BUFFER ZONE SHALL BE MAINTAINED AROUND THE EXCAVATION PERIMETER OR PARCEL BOUNDARIES. WHERE AN EASEMENT EXISTS, A BUFFER SHALL NOT OVERLAP THE EASEMENT, UNLESS OTHERWISE CONDITIONED BY THE PLANNING DIRECTOR OR PLANNING COMMISSION.

A. THE BUFFER ZONE SHALL PROVIDE AND RETAIN A BASIC BUFFER OF:

I. 50 FEET OF UNDISTURBED NATURAL VEGETATION, OR

II. A MINIMUM TEN FOOT EARTHEN BERM WITH AT LEAST A 2:1 SLOPE, OR

III. A MINIMUM SIX-FOOT FENCE.

B. A 2:1 SLOPE SHALL BE MAINTAINED BETWEEN THE BUFFER ZONE AND EXCAVATION FLOOR ON ALL INACTIVE SITE WALLS. MATERIAL FROM THE AREA DESIGNATED FOR THE 2:1 SLOPE MAY BE REMOVED IF SUITABLE, STABILIZING MATERIAL IS REPLACED WITHIN 90 DAYS FROM THE TIME OF REMOVAL.

C. THE PLANNING COMMISSION OR PLANNING DIRECTOR SHALL DESIGNATE ONE OR A COMBINATION OF THE ABOVE AS IT DEEMS APPROPRIATE. THE VEGETATION AND FENCE SHALL BE OF SUFFICIENT HEIGHT AND DENSITY TO PROVIDE VISUAL AND NOISE SCREENING OF THE PROPOSED USE AS DEEMED

APPROPRIATE BY THE PLANNING COMMISSION OR PLANNING DIRECTOR.

- D. BUFFERS SHALL NOT CAUSE SURFACE WATER DIVERSION WHICH NEGATIVELY IMPACTS ADJACENT PROPERTIES OR WATER BODIES. SPECIFIC FINDINGS ARE REQUIRED TO ALTER THE BUFFER REQUIREMENTS OF KPB 21.29.050(A)(2)(A) IN ORDER TO MINIMIZE NEGATIVE IMPACTS FROM SURFACE WATER DIVERSION. FOR PURPOSES OF THIS SECTION, SURFACE WATER DIVERSION IS DEFINED AS EROSION, FLOODING, DEHYDRATION OR DRAINING, OR CHANNELING. NOT ALL SURFACE WATER DIVERSION RESULTS IN A NEGATIVE IMPACT.
- E. AT ITS DISCRETION, THE PLANNING COMMISSION MAY WAIVE BUFFER REQUIREMENTS WHERE THE TOPOGRAPHY OF THE PROPERTY OR THE PLACEMENT OF NATURAL BARRIERS MAKES SCREENING NOT FEASIBLE OR NOT NECESSARY. BUFFER REQUIREMENTS SHALL BE MADE IN CONSIDERATION OF AND IN ACCORDANCE WITH EXISTING USES OF ADJACENT PROPERTY AT THE TIME OF APPROVAL OF THE PERMIT. THERE IS NO REQUIREMENT TO BUFFER THE MATERIAL SITE FROM USES WHICH COMMENCE AFTER THE APPROVAL OF THE PERMIT.]

2. *Buffer Area.*

- a. A 2:1 slope shall be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 90 days from the time of removal.
- b. The buffer area may be reduced where the planning commission or planning director, as applicable, has approved an alternate buffer plan introduced by the applicant. The alternate buffer plan must consist of natural undisturbed vegetation, or a minimum ten foot berm, or a minimum six-foot fence or a combination thereof, consisting of only one option in a single geographical location; unless the permittee proposes another solution approved by the planning commission or planning director, as applicable, to meet this condition.
- c. The buffer requirements may be waived by the planning commission or planning director, as applicable, where the topography of the property or the placement of natural barriers makes screening not feasible or unnecessary.

- d. There is no requirement to buffer a material site from uses that commence after approval of the permit.
- 3. *Processing.* In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of adjacent properties at the time.
- 4. *Water source separation.*
  - a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.
  - b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation [FROM THE SEASONAL HIGH WATER TABLE BE MAINTAINED] an excavation distance a maximum of 15 feet below the seasonal high-water table must be maintained under these conditions:
    - 1. No dewatering is allowed.
    - 2. The edge of any water body must be 200 feet from any DEC septic or well.
    - 3. A spill response kit must be maintained onsite.
    - 4. Operations shall stay 2 foot above an aquifer-confining layer.
    - 5. A 200-foot separation from any water body and any stored hazardous material.
  - [C. ALL CLUPS SHALL BE ISSUED WITH A CONDITION WHICH REQUIRES THAT A TWO-FOOT VERTICAL SEPARATION FROM THE SEASONAL HIGH WATER TABLE BE MAINTAINED.]
  - c. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.

5. *Excavation in the water table.* Excavation in the water table greater than ~~[300]~~200 horizontal feet of a water source and 15 feet below water table may be permitted with the approval of the planning commission based on the following:
  - a. Certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.
  - b. The installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate, and water elevation.
  - c. Groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three-month intervals by a qualified independent civil engineer or professional hydrogeologist, for at least one year prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
  - d. Operations shall not breach an aquifer-confining layer.
6. *Waterbodies.*
  - a. An undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet [FROM] of excavation limits and the ordinary high water level of surface water bodies such as a lake, river, stream, [OR OTHER WATER BODY, INCLUDING] riparian wetlands [AND MAPPED FLOODPLAINS AS DEFINED IN KPB 21.06]. This regulation shall not apply to ponds less than one acre on private land, man-made waterbodies being constructed during the course of the materials extraction activities. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.
  - b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.
7. *Fuel storage.* Fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for

uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface. Double wall tanks are also acceptable.

8. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads as required by KPB 14.40.175 and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
9. *Subdivision.* Any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit. The planning director may issue a written exemption from the amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a material site and all original permit conditions can be met.
10. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
11. *Hours of operation.* [ROCK CRUSHING EQUIPMENT SHALL NOT BE OPERATED BETWEEN 10:00 P.M. AND 6:00 A.M.]
  - a. Processing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
  - b. The planning commission may grant exceptions to increase the hours of operation and processing based on surrounding land uses, topography, screening the material site from properties in the vicinity and conditions placed on the permit by the planning commission to mitigate the noise, dust and ~~visual impacts~~ caused by the material site.
12. *Reclamation.*
  - a. Reclamation shall be consistent with the reclamation plan approved by the planning commission or planning director as appropriate in accord with KPB 21.29.060.
  - b. [AS A CONDITION OF ISSUING THE PERMIT, THE APPLICANT SHALL SUBMIT A RECLAMATION PLAN AND POST A BOND TO COVER THE ANTICIPATED RECLAMATION COSTS IN AN AMOUNT TO BE DETERMINED BY THE PLANNING DIRECTOR. THIS BONDING REQUIREMENT SHALL NOT APPLY TO SAND, GRAVEL OR MATERIAL SITES FOR WHICH AN EXEMPTION FROM STATE BOND REQUIREMENTS FOR SMALL OPERATIONS IS APPLICABLE



PURSUANT TO AS 27.19.050.] The applicant shall operate the material site consistent with the approved reclamation plan and provide bonding pursuant to 21.29.060(B). This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.

13. *Other permits.* Permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC air and water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives. Any violation of these regulations or permits reported to or observed by borough personnel will be forwarded to the appropriate agency for enforcement.
14. [VOLUNTARY]Volunteered permit conditions. Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission for CLUPs or the planning director for counter permits. Such conditions must be consistent with the standards set forth in KPB 21.29.040(A). Planning commission approval of such conditions shall be contingent upon a finding that the conditions will be in the best interest of the borough and the surrounding property owners. [VOLUNTARY] Volunteered permit conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in [VOLUNTARY] volunteered permit conditions may be proposed [AT] by permit [RENEWAL OR AMENDMENT] modification.
15. *Signage.* For permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access, whichever is more visible. Sign dimensions shall be no more than 15" by 15" and must contain the following information: the phrase "Permitted Material Site" along with the permittee's business name and a contact phone number.

16. Appeal. No clearing of vegetation shall occur within the 50 ~~100~~-foot maximum buffer area from the permit boundary nor shall the permit be issued or operable until the deadline for the appeal, pursuant to KPB 21.20, has expired.
17. Reverse signal alarms. Reverse signal alarms, used at the material site on loaders, excavators, and other earthmoving equipment may be more technically advanced devices; such as, a multi-frequency “white noise” alarms rather than the common, single (high-pitch) tone alarms. At its discretion, the planning commission or planning director, as applicable, may waive this requirement or a portion of this requirement. The waiver of this requirement shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
19. Dust suppression. Dust suppression may ~~shall~~ be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on haul routes within property boundaries. Based on surrounding land uses the planning commission or planning director, as applicable, may waive or reduce the requirement for dust suppression on haul routes within property boundaries.
21. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8) must be approved by a licensed civil engineer or SWPPP certified individual.
22. Setback. Material site excavation areas shall be 250-feet from the property boundaries of any local option zoning district, existing public school ground, private school ground, college campus, child care facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation shall be included in the 250-foot setback. At the time of application.

#### **21.29.060. Reclamation plan.**

- A. All material site permit applications require an overall reclamation plan.
- B. The applicant may revegetate with a non-invasive plant species and reclaim all disturbed land [UPON EXHAUSTING THE MATERIAL ON-SITE, OR WITHIN A PRE-DETERMINED TIME PERIOD FOR LONG-TERM ACTIVITIES, SO AS TO LEAVE THE LAND IN A STABLE CONDITION. RECLAMATION MUST OCCUR FOR ALL EXHAUSTED AREAS OF THE SITE EXCEEDING FIVE ACRES BEFORE A FIVE-YEAR RENEWAL PERMIT IS ISSUED, UNLESS OTHERWISE REQUIRED BY THE PLANNING COMMISSION. IF THE MATERIAL SITE IS ONE ACRE OR LESS IN SIZE AND HAS BEEN GRANTED A CLUP DUE TO EXCAVATION IN THE WATER TABLE,

RECLAMATION MUST BE PERFORMED AS SPECIFIED BY THE PLANNING COMMISSION OR PLANNING DIRECTOR IN THE CONDITIONAL USE OR COUNTER PERMIT] within the time period approved with the reclamation plan so as to leave the land in a stable condition. Bonding shall be required at \$750.00 per acre for all acreage included in the current five-year reclamation plan. In the alternative, the planning director shall accept a civil engineer's estimate for determining the amount of bonding. If the applicant is bonded with the state, the borough's bonding requirement is waived. Compliance with reclamation plans shall be enforced under KPB 21.50.

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

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

[D. THE PLAN SHALL DESCRIBE THE TOTAL ACREAGE TO BE RECLAIMED EACH YEAR, A LIST OF EQUIPMENT (TYPE AND QUANTITY) TO BE USED IN RECLAMATION, AND A TIME SCHEDULE OF RECLAMATION MEASURES.]

**21.29.070. Permit extension and revocation.**

- A. Conditional land use permittees must submit a request in writing for permit extension every five years after the permit is issued. Requests for permit extension must be made at least 30 days prior to permit expiration. Counter permittees must submit any request for a 12-month extension at least 30 days prior to the expiration of the original 12-month permit period.
- B. A permit extension certificate for a CLUP may be granted by the planning director after 5 years, and after one year for a counter permit where no modification to operations or conditions are proposed.
- C. Permit extension may be denied if: (1) reclamation required by this chapter and the original permit has not been performed; (2) the permittee is otherwise in noncompliance with the original permit conditions; or (3) the permittee has had a permit violation in the last two years and has not fulfilled compliance requests.
- D. A modification application shall be processed pursuant to KP.B 21.29.030-050 with public notice given as provided by KP.B 21.25.060 when operators request modification of their permit conditions based on changes in operations set forth in the modification application.
- E. There shall be no fee for permit extensions approved by the planning director. The fee for a permit modification processed under KP.B 21.29.070(D) will be the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.
- F. Failure to submit a request for extension will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KP.B 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.
- G. Permits may be revoked pursuant to KP.B 21.50.

#### **21.29.080. Permit termination.**

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

#### **21.29.090. Permit modifications.**

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

#### **21.29.100. Recordation.**

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

#### **21.29.110. Violations.**

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

#### **21.29.120. Prior existing uses.**

- A. Material sites are not held to the standards and conditions of a CLUP if a prior existing use (PEU) determination was granted for the parcel in accordance with KPB 21.29.120(B). To qualify as a PEU, a parcel's use as a material site must have commenced or have been operated after May 21, 1986, and prior to May 21, 1996, provided that the subject use continues in the same location. In no event shall a prior existing use be expanded beyond the smaller of the lot, block, or tract lines as they existed on May 21, 1996. If a parcel is further subdivided after May 21, 1996, the pre-existing use may not be expanded to any lot, tract, or parcel where extraction had not occurred before or on February 16, 1999. If a parcel is subdivided where extraction has already occurred, the prior existing use is considered

abandoned, and a CLUP must be obtained for each parcel intended for further material site operations. The parcel owner may overcome this presumption of abandonment by showing that the subdivision is not inconsistent with material site operation. If a parcel subject to a prior existing use is conveyed, the prior existing use survives the conveyance.

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

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

- 1. The planning department may request proof of continued compliance with AS 27.19.030 – 050 on an annual basis.
- 2. Pursuant to KPB 21.29.110 the enforcement process and remedies set forth in KPB 21.50 shall govern if the proof that the statutory requirements contained in AS 27.19.030-050 is not provided to the planning department.

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

**21.50.055. Fines.**

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

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



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

<b>CODE CHAPTER &amp; SECTION</b>	<b>VIOLATION DESCRIPTION</b>	<b>DAILY FINE</b>
KPB 21.44.130(C)(D)	Violation of Home Occupation Standards and Conditions/Local Option Zoning	\$300.00
KPB 21.44.130(F)	Disallowed Home Occupation/Local Option Zoning	\$300.00
KPB 21.44.135	Failure to file development notice	\$300.00
KPB 21.44.160(A)(B)	Prohibited use	\$300.00
KPB 21.44.160(C)	Violation of Development Standards/Single Family Zoning/Local Option Zoning	\$300.00
KPB 21.44.165(A)(B)	Prohibited use	\$300.00
KPB 21.44.165(C)	Violation of Development Standards/Small Lot Residential Zoning/Local Option Zoning	\$300.00
KPB 21.44.170(A)(B)	Prohibited use	\$300.00
KPB 21.44.170(C)	Violation of Development Standards/Rural Residential District/Local Option Zoning	\$300.00
KPB 21.44.175(B)(C)	Prohibited Use	\$300.00
KPB 21.44.175(D)	Violation of Development Standards/Residential Waterfront	\$300.00
KPB 21.44.180(A)(B)	Prohibited Use	\$300.00
KPB 21.44.180(C)	Violation of Development Standards/Multi-Family Residential District/Local Option Zoning	\$300.00
KPB 21.44.190(A)(B)	Prohibited Use	\$300.00
KPB 21.44.190(C)	Violation of Development Standards/Industrial District/Local Option Zoning	\$300.00

CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
KPB 21.46.030(b)	Failure to maintain bear-resistant garbage cans/Local option zone/Birch and Grove Ridge subdivisions Rural Residential District	\$300.00
KPB 21.50.100(F)	Removal of posted enforcement notice	\$300.00
KPB 21.50.100(G)	Violation of enforcement notice	\$1,000.00
KPB 21.50.130(I)	Violation of an enforcement order	\$1,000.00

**SECTION 4.** That this ordinance shall become effective upon its enactment.

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

\_\_\_\_\_  
Brent Johnson, Assembly President

ATTEST:

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

Yes:

No:

Absent:

# Kenai Peninsula Borough

## Planning Department

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### MEMORANDUM

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

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

**FROM:** Melanie Aeschliman, Planning Director *MA*

**DATE:** November 23, 2021

**SUBJECT:** Ordinance 2021-41 Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures (Mayor)

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

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

Your consideration of these amendments is appreciated.

**MEMORANDUM**

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

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

**FROM:** Bryan Taylor, Planner *BT*

**DATE:** November 17, 2021

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

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

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

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Date: November 17, 2021

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

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

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key staff and commissioners could be present.

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

# Kenai Peninsula Borough

## Legal Department

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### MEMORANDUM

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

**FROM:** A. Walker Steinhage, Deputy Borough Attorney *AW*  
Sean Kelley, Borough Attorney *SK*

**CC:** Charlie Pierce, Mayor  
Melanie Aeschliman, Planning Director

**DATE:** January 14, 2022

**RE:** Questions for the Assembly to consider regarding Ordinance 2021-41

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Appeals from Planning Commission decisions approving or denying material site conditional land use permit (CLUP) applications, and remands to the Commission which sometimes follow such appeals, cost the Borough time, resources, and money.

In response to inquiries from KPB Assembly members, the purpose of this memo is to present some questions for the Assembly to consider as it reviews Ordinance 2021-41. If the Assembly is able to resolve some or all of these questions, the costs associated with appeals from the Commission's CLUP decisions may be alleviated. The questions are as follows:

**1) Should the Planning Commission continue to have the discretion to deny a CLUP application?**

Current Code: The Planning Commission is vested with discretion to deny a permit application. Under KPB 21.25.050(B) the Planning Commission shall either "approve, modify or disapprove the permit application."

O2021-41 as proposed: The new section KPB 21.29.055 provides that the Planning Commission shall approve permit applications that meet all the mandatory conditions under KPB 21.29.050 and shall disapprove a permit application that does not meet all the conditions under KPB 21.29.050.



**2) If the Planning Commission has the discretion to deny a CLUP application, what is the scope of that discretion?**

- a. Should the Planning Commission have the discretion to deny a CLUP application which otherwise meets or exceeds all the conditions under KPB 21.29.050 if the Commission finds that the application does not meet the standards established under KPB 21.29.040?
- b. Should the Planning Commission have the discretion to deny a CLUP application which otherwise meets or exceeds all the conditions under KPB 21.29.050 **and** even if the Commission finds that the application meets the standards established under KPB 21.29.040?

**3) If the Assembly decides the Planning Commission should have the discretion to deny a CLUP application, how can the applicable KPB Code (specifically KPB 21.29.040 and 21.29.050) be improved to best equip the Commission to make findings of fact, based on substantial evidence in the record, to withstand scrutiny on appeal and thereby reduce remands after appellate review?**

Several tables are appended to this memo comparing current KPB Code language and the language proposed in Ordinance 02021-41<sup>1</sup> with the language drawn from the analogous codes from other second-class boroughs; namely, the Matanuska-Susitna Borough (Appendix A), the Ketchikan Gateway Borough (Appendix B), the Kodiak Island Borough (Appendix C), and the Fairbanks North Star Borough (Appendix D).

**4) If the Assembly decides to eliminate the Planning Commission's discretion to deny CLUP applications, then what is the purpose of the Planning Commission's review of CLUP applications?**

- a. If the Planning Commission's discretion is eliminated, then should review of CLUP applications simply become an administrative process?
- b. What effect will eliminating the Planning Commission's discretion to deny CLUP applications have on the public's ability to be heard?

Enclosures:

- (1) Appendix A
- (2) Appendix B
- (3) Appendix C
- (4) Appendix D
- (5) Sectional Analysis provided when O2019-30 was originally considered

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<sup>1</sup> New Text Underlined; [DELETED TEXT BRACKETED]

## APPENDIX A

### KPB/MATANUSKA-SUSITNA BOROUGH

<b>KPB 21.29.040. Standards for sand, gravel or material sites. (As proposed in O2021-41)</b>	<b>MSB 17.30.060 General Standards for Approval</b>
A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:	(A) In granting an administrative permit or a conditional use permit, the director or commission must make the following findings:
1. Protects against the lowering of water sources serving other properties;	(1) that the use is not inconsistent with the applicable comprehensive plan;
2. Protects against physical damage to [OTHER] <u>adjacent</u> properties;	(2) that the use will preserve the value, spirit, character, and integrity of the surrounding area;
3. [MINIMIZES] <u>Protects against</u> off-site movement of dust;	(3) that the applicant has met all other requirements of this chapter pertaining to the use in question;
4. [MINIMIZES] <u>Protects against</u> noise disturbance to other properties;	(4) that granting the permit will not be harmful to the public health, safety and general welfare; and
5. [MINIMIZES] <u>Protects against</u> visual impacts of the material site; [AND]	(5) that the sufficient setbacks, lot area, buffers or other safeguards are being provided to meet the conditions listed in MSB <a href="#">17.30.050</a> (B).
6. Provides for alternate post-mining land uses[.];	
<u>7. Protects Receiving Waters against adverse effects to fish and wildlife habitat;</u>	
<u>8. Protects against traffic impacts; and</u>	
<u>9. Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.</u>	

**APPENDIX B**  
**KPB/KETCHIKAN GATEWAY BOROUGH**

<b>KPB 21.29.040. Standards for sand, gravel or material sites. (As proposed in O2021-41)</b>	<b>KGB Code 18.55.050</b>
A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:	(a) Purpose. A conditional use permit, issued hereunder, is a device which gives flexibility to the zoning ordinance in a uniform and controlled manner. It permits inclusion, in zones where it is permitted by the zoning ordinance (of which this chapter is part), of uses which are basically desirable to the community, but where the nature of the use will not permit its location at every location in the said zones without restrictions and conditions designed to fit the special problems which the use presents. A conditional use permit allows a landowner to put his property to a use which the zoning ordinance expressly permits: It does not allow a landowner to use his property in a manner forbidden by the zoning ordinance.
1. Protects against the lowering of water sources serving other properties;	(b) Standards. As express conditions precedent to the granting of any conditional use permit, a majority of the planning commission members (not merely a majority of the members present), after a public hearing, must find in writing that:
2. Protects against physical damage to [OTHER] <u>adjacent</u> properties;	(1) The requested conditional use is reasonably necessary for the public health, safety, and general welfare; and
3. [MINIMIZES] <u>Protects against</u> off-site movement of dust;	(2) The requested conditional use will not permanently or substantially injure the lawful use of neighboring uses; and
4. [MINIMIZES] <u>Protects against</u> noise disturbance to other properties;	(3) The requested conditional use will generally be in harmony with the comprehensive plan; and
5. [MINIMIZES] <u>Protects against</u> visual impacts of the material site; [AND]	(4) The requested conditional use is a conditional use expressly permitted by the zoning ordinance in the zone in which the conditional use permit is requested.
6. Provides for alternate post-mining land uses[.];	
<u>7. Protects Receiving Waters against adverse effects to fish and wildlife habitat;</u>	
<u>8. Protects against traffic impacts; and</u>	
<u>9. Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.</u>	

## APPENDIX C

### KPB/KODIAK ISLAND BOROUGH

<b>KPB 21.29.040. Standards for sand, gravel or material sites. (As proposed in O2021-41)</b>	<b>KIB 17.200.050 General Standards for Approval<sup>2</sup></b>
A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:	A. <i>Approval.</i> If it is the finding of the commission, after consideration of staff's report and receipt of testimony at the public hearing, that the use proposed in the application, or under appropriate conditions or restrictions, meets all of the following, the conditional use permit shall be granted:
1. Protects against the lowering of water sources serving other properties;	1. That the conditional use will preserve the value, spirit, character and integrity of the surrounding area;
2. Protects against physical damage to [OTHER] <u>adjacent</u> properties;	2. That the conditional use fulfills all other requirements of this chapter pertaining to the conditional use in question;
3. [MINIMIZES] <u>Protects against</u> off-site movement of dust;	3. That granting the conditional use permit will not be harmful to the public health, safety, convenience and comfort;
4. [MINIMIZES] <u>Protects against</u> noise disturbance to other properties;	4. That the sufficient setbacks, lot area, buffers or other safeguards are being provided to meet the conditions listed in subsections <u>(A)(1)</u> through <u>(3)</u> of this section;
5. [MINIMIZES] <u>Protects against</u> visual impacts of the material site; [AND]	5. If the permit is for a public use or structure, the commission must find that the proposed use or structure is located in a manner which will maximize public benefits.
6. Provides for alternate post-mining land uses[.];	
<u>7. Protects Receiving Waters against adverse effects to fish and wildlife habitat;</u>	
<u>8. Protects against traffic impacts; and</u>	
<u>9. Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.</u>	

<sup>2</sup> Interestingly, KIB Code 17.200.050 contains the following subsection: "B. Denial. If the commission finds, after consideration of staff's report and receipt of testimony at the public hearing, that it cannot make all of the required findings in subsection A of this section it shall deny the conditional use permit."

**APPENDIX D**  
**KPB/FAIRBANKS NORTH STAR BOROUGH**

<b>KPB 21.29.040. Standards for sand, gravel or material sites. (As proposed in O2021-41)</b>	<b>FNSB 18.104.050 Procedures for conditional uses.</b>
A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:	C. Hearing and Decision by the Planning Commission. The Planning Commission shall review, hear and decide whether or not to approve a request for a conditional use. The Planning Commission shall also consider and adopt findings in each of the following:
1. Protects against the lowering of water sources serving other properties;	1. Whether or not the proposed conditional use conforms to the intent and purpose of this title and of other ordinances and state statutes;
2. Protects against physical damage to [OTHER] <u>adjacent</u> properties;	2. Whether or not there are adequate existing sewage capacities, transportation facilities, energy and water supplies, and other public services to serve the proposed conditional use;
3. [MINIMIZES] <u>Protects against</u> off-site movement of dust;	3. Whether or not the proposed conditional use will protect the public health, safety and welfare.
4. [MINIMIZES] <u>Protects against</u> noise disturbance to other properties;	
5. [MINIMIZES] <u>Protects against</u> visual impacts of the material site; [AND]	
6. Provides for alternate post-mining land uses[.];	
7. <u>Protects Receiving Waters against adverse effects to fish and wildlife habitat;</u>	
8. <u>Protects against traffic impacts; and</u>	
9. <u>Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.</u>	

# Kenai Peninsula Borough

## Legal Department

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### MEMORANDUM

**TO:** Kelly Cooper, Assembly President  
Kenai Peninsula Borough Assembly Members

**THRU:** Charlie Pierce, Mayor

**FROM:** Sean Kelley, Deputy Borough Attorney  
Max Best, Planning Director

**DATE:** October 24, 2019

**RE:** Material Site Sectional Analysis

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Please find following a sectional analysis of the amendments to the material site ordinance proposed by the Kenai Peninsula Borough Planning Commission.

1. In KPB 21.25.030. - Definitions.

A definition of "assisted living home" is added because a setback is proposed to be required from those facilities. A definition for "development plan" is added to support a new exemption from the material site ordinance that allows extraction for on-site development. A definition of "disturbed" is added and the definition of "exhausted" is eliminated. This change is made to avoid the situation where reclamation is delayed or avoided by asserting a material site is not yet exhausted, instead reclamation is in reference to disturbed areas. The term "disturbed" is also consistent with the state of Alaska reclamation language. A definition of "haul route" is added to support the proposed requirement for off-site dust suppression. A definition of "permit area" is added—this clarifies that a portion of a parcel, as opposed to an entire parcel, may be subject to a material site permit and defines what attributes will be considered part of the permitted area. A definition of "vicinity" is added to include all existing uses within the ½-mile notification area. This defines the area that should be considered when waiving or lessening the conditions on the permit.

## Material Site Sectional Analysis

October 24, 2019

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2. KPB 21.29.010. -Material extraction exempt from obtaining a permit.

Subsection (D) adds a new exemption for parcels with a development plan on file with the planning department. This provision exempts from the ordinance short-term extraction that is incidental to site development for a building project.

3. KPB 21.29.030. -Application procedure.

Surface water protection measures are moved from the site plan section of the application to Paragraph (A)(8) because a surveyor is required to prepare the site plan, but an engineer is necessary to design the surface water protection measures.

Paragraph (A)(9)(f) is clarified to require more than 1 test hole placed anywhere on the parcel as that requirement allowed for taking the test hole at the highest elevation on a parcel which may not be the most accurate measurement of depth to groundwater. The proposed ordinance requires a test hole for every ten acres of excavated area and the test holes must be four feet below the proposed depth of excavation. This is consistent with the proposed increased requirement that excavation remain four feet above ground water which is consistent with Alaska DEC User's Manual Best Management Practices for Gravel/Rock Aggregate Extraction Projects – Protecting Surface Water & Groundwater Quality in Alaska (Sept. 2012) (hereinafter "Best Management Practices") and is also consistent with the current requirement for counter permits.

4. KPB 21.29.040. -Standards for sand, gravel or material sites.

Three new standards are added that either existing or proposed conditions will meet. Receiving waters are protected for fish and wildlife. This standard is consistent with mandatory condition #6 which requires a setback from waterbodies for material site extraction. Standard #8 is added to protect against traffic impacts which is consistent with the conditions regarding damage to borough roads, proposed ingress and egress, noise, and dust. Standard #9 is added because planning decisions should be consistent with the comprehensive plan.



## Material Site Sectional Analysis

October 24, 2019

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5. KPB 21.20.050(A)(1) is changed to require staking the permit boundaries, rather than the parcel boundaries prior to issuance of the permit. (Staking the boundaries of the parcel is currently required at time of application.)
  6. KPB 21.20.050(A)(2) is changed to require a maximum buffer of 100 feet unless the operator can demonstrate to the planning commission that there are good reasons for a reduced buffer. A fence, vegetation, or berm or a combination thereof may be used as a buffer. Unlike the current code, the maximum vegetative buffer is not 50 feet but could be up to the entire 100 foot of buffer required. Another new requirement is that when a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required. This is to avoid the practice of making application and then destroying the vegetation that could have served as a buffer. Finally, there is a new condition allowing the buffer to be reduced with an approved alternate buffer plan which may consist of a berm, vegetation, fence or other type of buffer solution. For example, a moveable wall that would screen noise and the visual impact of the material site could be allowed.
  7. Language is revised in KPB 21.29.050(A)(3) for consistency by using the term "vicinity" rather than the term "adjacent".
  8. In KPB 21.20.050(A)(6) the buffer from waterbodies is increased to 200 feet. This condition is consistent with the Alaska DEC User Manual Best Management Practices and the newly proposed standard regarding the protection of "receiving waters".
  9. Paragraph KPB 21.29.050(A)(11) is revised to prohibit processing from 7 p.m. to 6 a.m. The current prohibition is 10 p.m. to 6 a.m. for rock crushing. Paragraph (b) is added to allow the planning commission to grant exceptions to the restrictions on processing hours based on a variety of factors including surrounding land uses, topography, screening the material site from adjacent properties and conditions placed on the permit by the planning commission to mitigate the noise, dust, and visual impacts caused by the material site.
  10. Paragraph KPB 21.29.050(A)(12)(b) clarifies the requirement for a reclamation plan and bonding for material sites that are not exempt from the state bonding requirements. This condition is further detailed in KPB 21.29.060(B) addressing reclamation.

## Material Site Sectional Analysis

October 24, 2019

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11. Air quality is added to the list of other regulations in condition KPB 21.29.050(A)(13) that a material site is responsible for following.
  12. Language is revised in KPB 21.29.050(A)(14) for consistency by using the term "volunteered" rather than the term "voluntary".
  13. In KPB 21.29.050(A)(16), a new condition clarifies that a material site permit shall not be issued until the 15-day appeal period has passed to avoid someone operating prior to an appeal being filed only to be required to cease because of the stay required by KPB 21.20.260.
  14. A new condition is added in KPB 21.29.050(A)(17), Sound Level. The condition requires that sound levels from material site activities not exceed 75 dB(A), measured at or within the property boundary of the material site. Some exceptions are made to increase that limit for sound of a short duration between 7 a.m. and 7 p.m. The planning commission may reduce the sound level requirements in consideration of the existing land uses in the vicinity. This sound level requirement has a sunset clause of 365 days after adoption unless extended by the assembly in order to gather information on noise levels and ensure that this new requirement is workable for site operations. This condition meets the standard regarding reduction of noise impacts generated by a material site.
  15. KPB 21.29.050(A)(18) is a new requirement that white noise devices be used instead of high-pitched tone alarms. This requirement may be waived based on existing land uses in the vicinity of the material site. This condition meets the standard regarding reduction of noise impacts generated by a material site.
  16. KPB 21.29.050(A)(19) is a new condition allowing the planning commission or planning director as appropriate to determine the points of ingress and egress of a material site as concerns regarding the direction of haul route traffic are frequently raised. Driveway authorizations for access to public roads must be received prior to permit issuance. This condition meets the standards regarding traffic, noise, and dust.
  17. KPB 21.29.050(A)(20) is a new condition requiring dust suppression on haul routes. The condition can be relaxed based on surrounding land uses. This condition meets the standard regarding reduction of dust generated by material sites.

## Material Site Sectional Analysis

October 24, 2019

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18. KPB 21.29.050(A)(21) provides that if surface water protection measures are to be provided as defined in KPB 21.29.030(A)(8), they must be approved by a licensed civil engineer.
  19. KPB 21.29.050(A)(22) is a new condition requiring material sites to maintain one monitoring tube per ten acres of excavated area four feet below the proposed excavation. This condition is consistent with the new requirement that excavation remain four feet above groundwater. This condition addresses the standard of protection of surrounding water sources.
  20. KPB 21.29.050(A)(23) is a new requirement for a setback from local option zoning districts, schools, child care facilities, senior centers, assisted living homes and licensed health care facilities.
  21. KPB 21.20.055, Decision, is added which clarifies the planning commission's authority to approve or disapprove a permit application and authority to modify permit conditions.
  22. KPB 21.29.060 is amended to clarify that reclamation plans last for five years consistent with the five-year renewal requirement for material site permits. Bonding is required at \$2000.00 per acre for all acreage included in the five-year reclamation plan, or the planning director may accept a civil engineer's estimate for determining the amount of the bond. If the applicant is bonded with the state, the applicant need not be bonded with the borough.
  23. KPB 21.29.120, Prior Existing Uses, is amended to delete the provision regarding terminating abandoned material site permits since it was only applicable to permits that did not operate between May 21, 1996 and May 21, 2011. New language is added requiring PEUs to provide proof of compliance with the state reclamation, bonding, and letter of intent requirements. Failure to file this documentation may result in an enforcement action.
  24. KPB 21.50.055, Fines, is amended to include a \$300.00 fine for failure to provide a reclamation plan and proof of bonding or letter of intent pursuant to KPB 21.29.120.

## **Broyles, Randi**

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**From:** Hans Bilben <catchalaska@alaska.net>  
**Sent:** Tuesday, February 8, 2022 6:12 PM  
**To:** Blankenship, Johni  
**Subject:** <EXTERNAL-SENDER>Info for 2/15/22 Committee of the Whole (Material Site Ordinance)

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

Date:  
2/8/2022

To:  
KPB Assembly Members

Subject:  
KPB 21.29.050 (A)(2) Buffer Area/Zone

Assembly Members,

During the January 18th Assembly meeting Gina DeBardelaben of McLane Consulting spoke concerning the proposed material site ordinance revision. She followed up with a letter to the Assembly dated January 19th. While most of Gina's proposals have merit and should be considered, her proposal to allow an applicant to extract material from under and within the Buffer Zone is seriously flawed.

The Buffer Zone is just what the name implies, a buffer to protect neighboring property owners from noise, visual, and to some degree dust impacts. The buffer zone is designed in accordance with existing uses of neighboring properties, and may consist of fifty feet of undisturbed natural vegetation, a six foot earthen berm with a 2/1 slope, a six foot fence, or a combination of the three. In cases where there are no neighboring properties that will have negative impacts, the buffer zone can be minimal or nonexistent. When existing uses dictate the need for protections the Buffer Zone is designed accordingly. The reason for the entire CLUP ordinance is stated in **KPB 21.25.020 Purpose**. It says "...impose minimum standards for certain land uses which may be damaging to the public health, safety, and welfare..." Those minimum standards are spelled out in **KPB 21.29.040** and need to be adhered to during all aspects of the proposed use.

Gina's final statement that allowing excavation in the Buffer Zone will reduce need for additional material sites has no merit, as the need for additional sites will be totally demand driven. Another oversight in her proposal is just where is all of the material going to come from to replace and rebuild the Buffer Zone after excavating twenty feet or more in depth.

Allowing excavation in the Buffer Zone deprives borough residents of the protections spelled out in the ordinance, contradicts the stated Purpose of the entire ordinance, and should not be allowed under any circumstances.

Thank you for your service to the people of the Kenai Peninsula,



## Broyles, Randi

**From:** Hans Bilben <catchalaska@alaska.net>  
**Sent:** Wednesday, February 9, 2022 10:52 AM  
**To:** Blankenship, Johni  
**Subject:** <EXTERNAL-SENDER> Supporting Documents for proposed material site amendments.

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

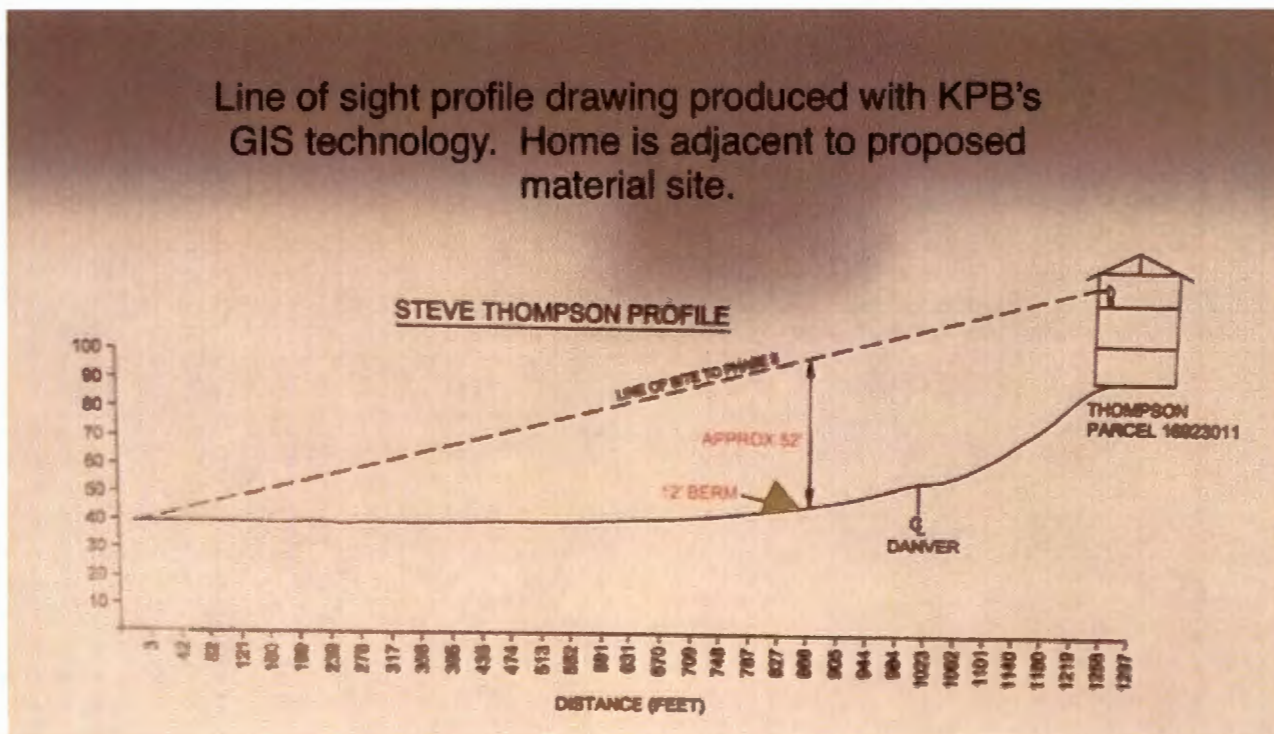
Hi Johni,

I should have sent these with the proposed amendments yesterday, but OOPS! If you could include these supporting documents with my proposed amendments to the material site ordinance for the Committee of the Whole session on 2/15/2022 that would be great!!

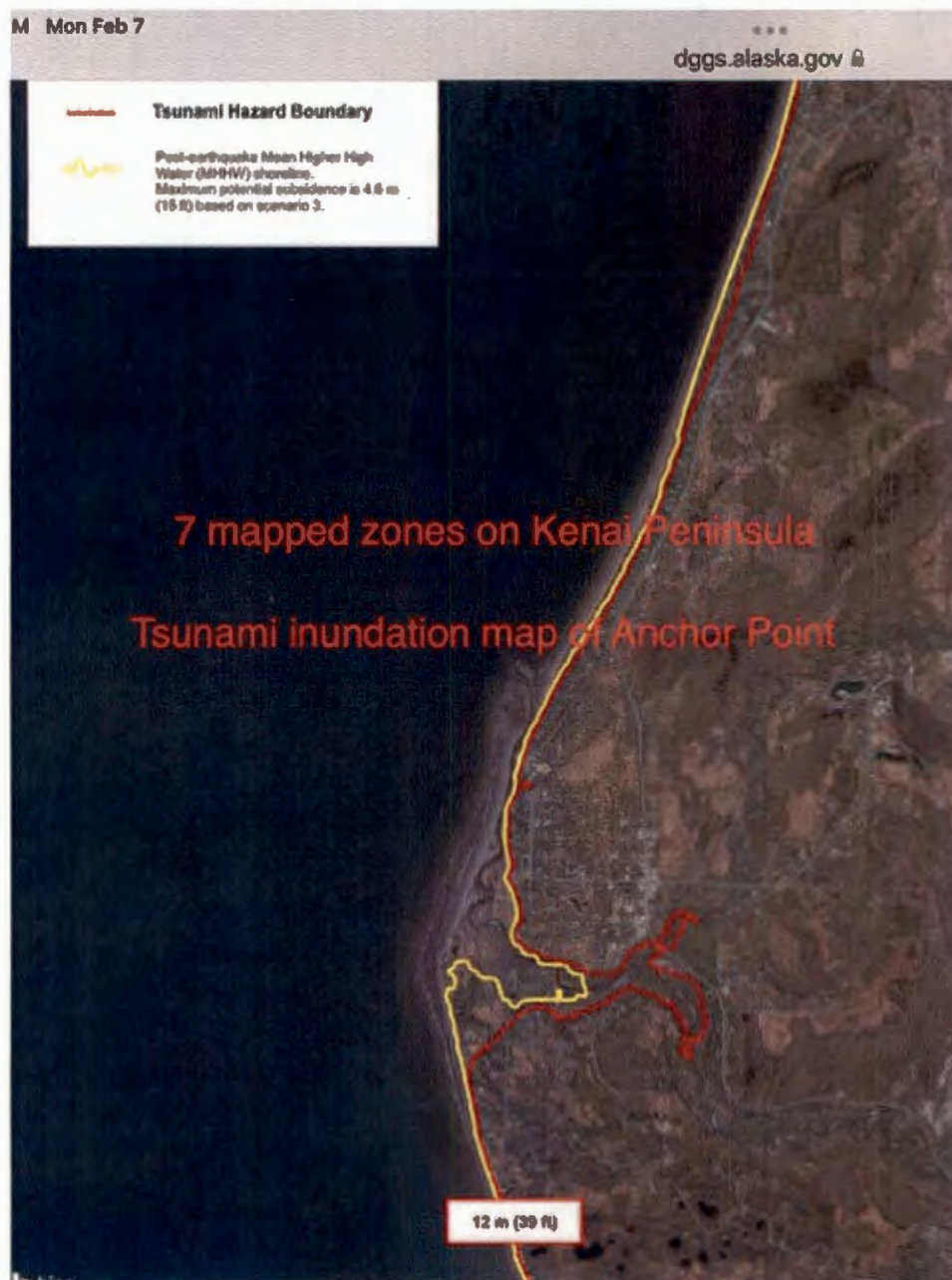
Thanks,

Hans Bilben

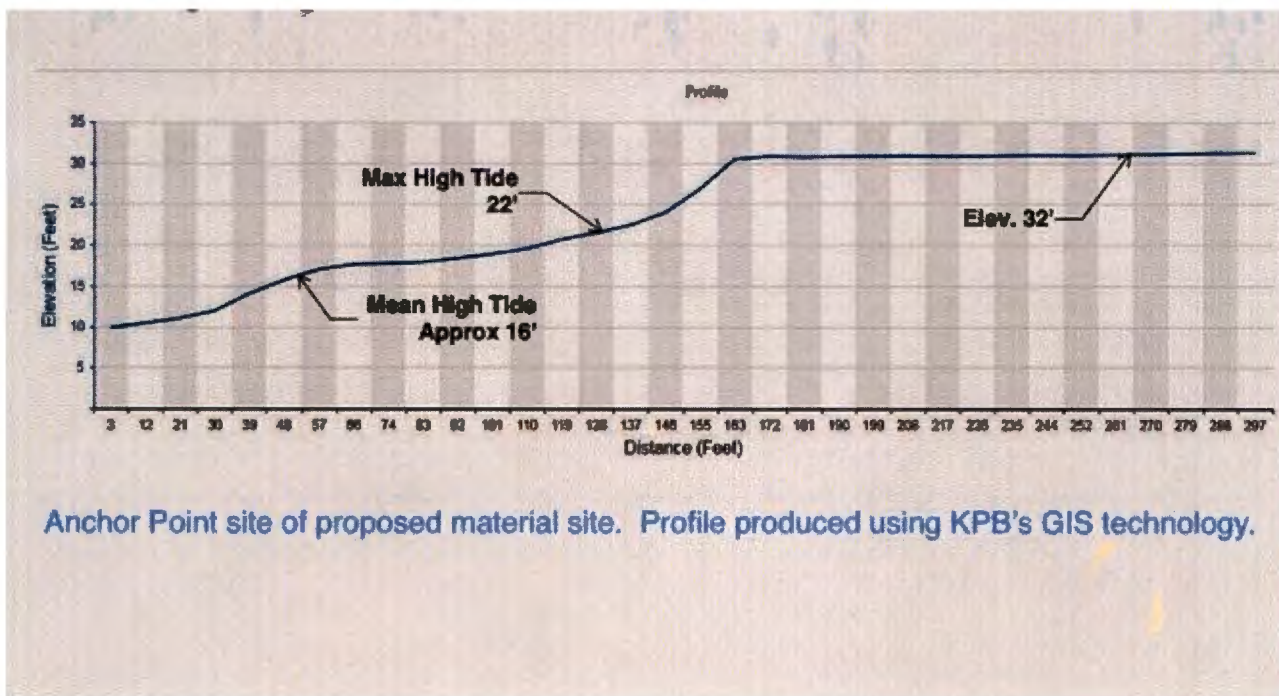
Document in support of proposed amendment 21.29.050 (A)(2)(b) Buffer Area.











8:37 AM Wed Feb 9

sms-tsunami-warning.com

100%

rebuilding and road reconstruction) are critical.



Image: Tsunami environmental impact

Combined with the issue of waste is that of hazardous materials and toxic substances that can be inadvertently mixed up with ordinary debris. These include asbestos, oil fuel, and other industrial raw materials and chemicals. Rapid clean-up of affected areas can result in inappropriate disposal methods, including air burning and open dumping, leading to secondary impacts on the environment.

Contamination of soil and water is the second key environmental impact of a tsunami. Salination of water bodies such as rivers, wells, inland lakes, and groundwater aquifers can occur in most cases. This also affects the soil fertility of agricultural lands due to salination and debris contamination, which will affect yields in the medium and long term. Sewage, septic tanks and toilets are damaged contaminating the water supply.

Last but not least, there may be radiation resulting from damage to nuclear plants, as it happened in Japan in March 2011. Since radiation exists for a long time, it has the capacity to inflict damage upon anything exposed to it. Radiation is most dangerous to animals and humans causing destruction as molecules lose their electrons. The damage caused by radiation to the DNA structure determines birth defects, cancers even death.

## Cost

Massive costs hit communities and nations when a tsunami happens. Victims and survivors of the tsunami need immediate help from rescue teams.

**Broyles, Randi**

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**From:** Hans Bilben <catchalaska@alaska.net>  
**Sent:** Tuesday, February 8, 2022 6:00 PM  
**To:** Blankenship, Johni  
**Cc:** Aeschliman, Melanie; Kelley, Sean; Chesley, Lane  
**Subject:** <EXTERNAL-SENDER>Material Site Ordinance Amendments  
**Attachments:** Standard #1 Amendment.pages; CLUP Category Amendment.pages; Buffer Area amendments.pages; Waterbody Amendments.pages

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

Hi Johni,

Please provide these proposed amendments to the Committee of the Whole dealing with the Material Site Ordinance on 2/15/2022. If there is any trouble opening these because of format, let me know and I'll adjust accordingly!

Thanks,

Hans Bilben

**1. 21.29.050 (A)(2) Buffer Area (3 amendments)**

Replace (a) with:

- a. A buffer area shall be established between the area of excavation and the parcel boundaries. The buffer area for a Class 1 (processing) CLUP shall consist of the following: A minimum fifty feet of undisturbed natural vegetation and a minimum twelve-foot earthen berm with a minimum 2/1 slope. The buffer area for a Class 2 (non-processing) CLUP shall consist of one or any combination of the following: Fifty feet of undisturbed natural vegetation, a minimum six-foot fence, a minimum six-foot earthen berm with a minimum 2/1 slope.
- 

- 2. Add a new paragraph to 21.29.050 (A)(2) Buffer Area—maybe call it (b) and move remainder of letters down one?**

- b. KPB's Geographic Information System (GIS) technology will be utilized in the design of the buffer area when differing elevations exist between the proposed site and neighboring property owners. Using this technology, line of sight profile drawings from the uppermost inhabitable level of existing properties located within one thousand feet of the proposed parcel boundary shall be utilized in the determination of sufficiency of the buffer area.
-

3. In the revised proposal under Buffer Area (c) the word “**not**” is omitted from what the wording was in the current (**see 21.29.050 (A)(2) in original**) ordinance. This is a huge takeaway from borough residents and I believe that when it was discussed at the material site group they decided to keep the word “**not**”. As worded, the proposed revision would include any easements between a property owner and a gravel pit as part of the Buffer Area.

**21.29.050 (A)(2)(c)** Should be amended to read:

c. Where an easement exists, a buffer shall **not** overlap the easement, unless otherwise conditioned by the planning commission or planning director.



1. Three Amendments to create two Categories of CLUPs.

#### **21.29.020 (B) Conditional Land Use Permit.**

B. A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. [~~A CLUP IS REQUIRED FOR MATERIALS PROCESSING.~~] **CLUPs will be categorized at the time of application as: Class 1 (Processing), or Class 2 (Non-Processing).** A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPs and the provisions of 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of 21.29 are controlling.

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#### **2. 21.29.050 (A) Permit Conditions.**

A. The following mandatory conditions apply to counter permits, [~~CLUPs~~] **Class 1 CLUPs, and Class 2 CLUPs** issued for sand, gravel, or material sites:

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#### **3. 21.29.050 (A)(3) Permit Conditions**

3. Processing. In the case of a [~~CLUP~~] **Class 1 (processing) CLUP**, any equipment which conditions or processes material must be operated at least [~~300~~] **500** feet from the parcel boundaries. At its discretion, the planning commission may waive the [~~300~~] **500** foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of adjacent property at the time.

## **Amendment to Standards**

### **21.29.040 (A)(1) Standards for sand, gravel, or material sites.**

1. Protects against the lowering and/or contamination of water sources serving other properties;

Add new paragraphs (c) and (d) to this section:

**21.29.050 (A)(6) Waterbodies.**

c. No material site extraction shall be allowed within the boundaries of a tsunami inundation area. These areas are mapped by the Alaska DNR, in partnership with the Alaska Earthquake Center and the Alaska Division of Homeland Security and Emergency Management.

d. When material sites are proposed near waterways and estuaries which support salmon rearing habitat existing ground water flow information shall be utilized to determine if standards will be met.



Mr. Brent Johnson, President,  
Kenai Peninsula Borough Assembly  
and Assembly members

Dear Mr. Johnson and Assembly Members,

Reading about the wish of the Assembly to review the Gravel Pit Ordinance, reminded me of my years of involvement with this.

Drew Scalzi wrote the first one, which the Gravel folks hated, they did not feel it was necessary to control their businesses, and deeply resented the efforts. I got involved thanks to Ann Byes of Anchor Point, who lives near a prime example of gravel pit abuse, where a house stands totally isolated by the deep extractions all around it. She and I were concerned that future extraction would not affect residents nearby, and had asked for at least a 300 ft. distance from a well and the proposed gravel pit. Before it was voted on, that was changed to 100 ft. At that time Committee meetings were behind closed doors and discussion at the meetings very limited. (During my tenure we changed that.)

So, during my tenure we took another look at it and rewrote it, again to the utter chagrin of the businesses. At that time, as you are now, we came up against a subdivision that faces a busy gravel pit just outside the quiet subdivision, and those folks are not happy about it. They can get local option zoning within the subdivision, but no protection outside the subdivision.

It is time for the Assembly to consider zoning certain areas as residential, that would not allow gravel pits, or commercial businesses. It is the only way to ensure established subdivisions will be protected from commercial disturbances.

In the past there has been a huge outcry against zoning, but I think the time has come. I see the planning committee listening to impassioned cries against proposed gravel pits, and I can empathize. It is impossible to create an ordinance that will protect them.

And somehow we have to recognize there is a need for gravel in order to build anything, roads, homes, etc. That is a vital business on the Peninsula.

I do not envy you what lies ahead. I wish you the best in your endeavors.

Sincerely,

Milli Martin  
P.O. Box 2652  
Homer, Alaska 99603

## Broyles, Randi

---

**From:** Blankenship, Johni  
**Sent:** Wednesday, January 26, 2022 11:54 AM  
**To:** Broyles, Randi  
**Subject:** FW: <EXTERNAL-SENDER>Fwd: KPB Ordinance 2021 - 41

**From:** Larry Smith <dlconst.smith@gmail.com>  
**Sent:** Wednesday, January 26, 2022 11:52 AM  
**To:** Blankenship, Johni <JBlankenship@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Fwd: KPB Ordinance 2021 - 41

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

Please include this in the Assembly packet for the next meeting wherein KPB Ordinance 2021-41 is considered. Thank you.

----- Forwarded message -----

**From:** Larry Smith <[dlconst.smith@gmail.com](mailto:dlconst.smith@gmail.com)>  
**Date:** Wed, Jan 26, 2022 at 11:47 AM  
**Subject:** KPB Ordinance 2021 - 41  
**To:** <[bjohnson@kpb.us](mailto:bjohnson@kpb.us)>, <[bhibbert@kpb.us](mailto:bhibbert@kpb.us)>, <[rderkevorkian@kpb.us](mailto:rderkevorkian@kpb.us)>, <[bjorkman@kpb.us](mailto:bjorkman@kpb.us)>, <[tysoncox@kpb.us](mailto:tysoncox@kpb.us)>, <[belam@kpb.us](mailto:belam@kpb.us)>, <[cecklund@kpb.us](mailto:cecklund@kpb.us)>, <[lchesley@kpb.us](mailto:lchesley@kpb.us)>, <[mtupper@kpb.us](mailto:mtupper@kpb.us)>, Pierce, Charlie <[cpierce@kpb.us](mailto:cpierce@kpb.us)>, Kpac Association <[kpacassociation@yahoo.com](mailto:kpacassociation@yahoo.com)>

Ladies and Gentlemen,

I attended the KPB Assembly meeting on January 18, 2022 and testified against this Ordinance. I do not know how many emails you received in support of this Ordinance but seem to recall that everyone (at least a majority) who testified in person that evening testified against the Ordinance. And yet at the conclusion of the public testimony the Assembly introduced the Ordinance and offered a number of amendments; some of which were adopted and others rejected.

Therefore I wonder who it is that you are representing? Certainly not the public or your constituents since in my view they requested that you vote down the Ordinance. Are you representing the KPB Planning Commission or the KPB Administration? Why are you moving forward with this Ordinance?

--

Larry Smith

President  
D & L Construction Co., Inc.  
(907) 262-6160  
(907) 262-6163 Fax  
(907) 398-4284 Cell

--

Larry Smith

President

D & L Construction Co., Inc.

(907) 262-6160

(907) 262-6163 Fax

(907) 398-4284 Cell

## Dibble Creek Rock Ltd.

---

January 20, 2022

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

RE: Review of Ordinance 2021-41

Dibble Creek Rock Ltd. (DCR) does not support the current proposed changes regarding KPB Ordinance 2021-41. We simply feel that the Borough needs to put more research into logical, effective changes to the ordinance that make sense. Not only economic sense, but changes that are geared towards efficiency, usefulness, and overall production for the operators and to stop acting upon the skewed emotions of landowners.

The proposed changes to the ordinance currently read very distorted. It is very misguided and will ultimately result in more complaints to the Borough, which is why the code was written in the first place, to reduce complaints. Wording within the code should be heavily modified, eliminating wording or phrases that have nothing to do with working within a material site or phrases that relay unattainable results. Wording such as "other uses, protects against, minimizes, vicinity" are just a few examples that are vague and subject to interpretation. Possibly more appropriate wording could be considered. It also appears there is potential for unnecessary overlap in regulation between the Borough and other State and Federal agencies.

As one of the larger gravel processors on the Kenai Peninsula, we are highly disappointed that no one from the KPB Material Site Work Group reached out to Dibble Creek Rock Ltd. in the past two years for our input or suggestions for modifications to the ordinance. What operators did they reach out to for input?

The growing need for **quality**, processed gravel throughout the Kenai Peninsula will become increasingly difficult to attain. Product specifications need to be met to ensure that aggregates of superior quality are produced for not only maintaining roads, but for home and building foundations on less than favorable land conditions. Quality aggregates are a big part of the ready-mix concrete and asphalt manufacturing process. Products that prove to be crucial components in the road building and general construction industry. Challenging demands put forth in the new ordinance would drive the cost of doing business through the roof. In turn, dramatically increasing the price of materials to the end user (State, Feds, Borough, Homeowners).

We do hope that our thoughts, along with others on the Kenai Peninsula are genuinely taken into consideration.

Respectfully,

Cap Shafer  
President

---

Quality Washed Rock Products • Ready Mix Concrete

34481 North Fork Road • Anchor Point, AK 99556 • 907.235.7126 - Phone • 907.235.0682 - Fax



To the Kenai Peninsula Borough Assembly,

The Kenai Peninsula Aggregate and Contractors Association has received over a hundred phone calls from our members and the public in regard to the actions of the assembly at the meeting conducted on the 18<sup>th</sup> of January, 2022. All these calls asked us two things. What is going on?!? Why did the assembly go against the will of the people? Specifically, callers are concerned about the Assembly's decision to do so.

Several of our members have asked the Association to write a letter as a plea of communication and education, asking members of the assembly to contact them before any further amendments are considered. Most of our members and the public are concerned about what damage to the industry, economy, property rights, and equal protection any further amendments will do without industry input.

Many calls received have a consensus that further amendments without education of the industry will result in negative impacts. These impacts have varied from the closure of existing material sites, closure to the public, doubling or tripling of material costs, or significant increase in the cost of material. This will unnecessarily impact the economy of the Kenai peninsula and quite possibly affect the safety of the residents in many ways. Many worried that if the cost of sand increases dramatically, roads will receive less maintenance, causing potentially fatal accidents. That is just the most obvious concern, as we are in the season of slick roads and the residents have already experienced cutbacks in road maintenance during the Walker administration at the state level. We can see how voters responded when Government made decisions that affected basic needs and took advice from special interests. One might note the current situation and reaction of the trucking industry in Canada, due to adverse regulation.

As a plea for communication and education, these members of our association below have asked their names and phone numbers be included. Thank you for your full consideration in this matter.

Ed Martin III, President, KPACA 252-2554.

Cap Shafer, Dibble Creek Rock, 399-4550

Larry Smith, D&L Construction, 398-4284

Robert Peterkin, Northwind Properties LLC, 252-7482

Dave Yragui, 252-1891

Dan Michel, Valley View Gravel, 252-1833

Jake Denbrock, SND Enterprises, 252-0156

Glen Martin, Great Northern Construction and Management, 252-5326





Lou Oliva, L&J Enterprises, 252-1300

Marty Oberg, Peninsula Construction, 398-6331

Matt Letzring, Letzring Inc., 398-5263

Mark Rozak, Steam on Wheels, 252-2335

Troy Jones, East Road Services Inc., 235-6574, 399-1297

Terry Best, 398-1268

Chad Hammond, Hammond Trucking, 398-6715

Scott Foster, Foster Construction, 394-1977

Dennis Merkes, Merkes Builders, 398-3369

Richard Encelewski, Ninilchik Native Assoc., 348-0884, 567-3866

Cole Peterson, Metco Alaska llc, 362-7142

Randy Chumley, A&L Construction, 398-3048

Sean McKeown, Knik Construction, 907-545-3637

**From:** K, E, & E Martin <[keeconstructionllc@yahoo.com](mailto:keeconstructionllc@yahoo.com)>  
**Sent:** Sunday, January 30, 2022 12:14 PM  
**To:** Pierce, Charlie <[CPierce@kpb.us](mailto:CPierce@kpb.us)>; Planning Dept, <[planning@kpb.us](mailto:planning@kpb.us)>; Kelley, Sean <[skelley@kpb.us](mailto:skelley@kpb.us)>; Blankenship, Johni <[JBlankenship@kpb.us](mailto:JBlankenship@kpb.us)>  
**Subject:** Fw: <EXTERNAL-SENDER>The Doctrine of Estoppel

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

KPB Assembly & Borough Mayor,  
 Please consider a no vote on 2021-41 or any substitution.

Go back to square one, with a work group made up of 4 individuals from the Industry & 4 Concerned Property Owners only. Allow them to find consensus on the issues that the Government has powers to enforce **& only those powers (ie: ZONING or not under a second class Borough ?)** . Anything beyond lawful KPB Code & Enforcement powers needs to be resolved in Civil Court. The KPB Administration shouldn't become referee for conflicts ahead or after citizen civil controversies regarding Private Property Rights. .

The government should provide assistance (information ) of Law, Jurisdiction & by what means to the KPB can Enforce Code! We feel this is the only equitable solution to this controversy now appearing currently before the Administration, Assembly & it's citizens.

As far as the requested "REMAND " on the civil cases , stay out of it entirely regardless of any demand of the Superior Court order(s). The only response should be "we did our job now do yours & we advise consideration of applying the Doctrine of ESTOPPEL.

It appears to us the time to defend the permits the KPB has issued has maybe long past! You failed to honestly do any defense for the Permit Holders. Why is that ? Being the party who issued the permit(s), you should defend it/them!

No Government should be the catalyst for controversy! Please consider our views.  
 Ed & Kathleen Martin.

KEE Construction, LLC



January 6, 2022

Mr. Ed Martin III  
President  
Kenai Peninsula Aggregate and Contractors Association  
via email: Kpac Association [kpacassociation@yahoo.com]

Re: Comments on KPB proposed material site ordinance amendments

Dear Mr. Martin:

You have requested that I review the recently proposed Kenai Peninsula Borough material site ordinance amendments introduced December 7, 2021, by the Mayor along with your suggested revisions to the amendments and provide comments. You and I have also discussed the process leading up to these proposed amendments. My comments are provided pro bono as a courtesy to your organization, as well as to the Kenai Peninsula Borough and all residents and businesses interested in this topic.

I do not have any current clients or projects in the Borough that I would consider a conflict of interest, however I do have more than 39 years of experience performing hydrogeologic work in Alaska with some of it on the Kenai Peninsula, as well as relevant experience being involved in the regulation and management of complex resource development issues from both government and private sector perspectives.

My comments are grouped into two areas: 1) the process of developing these amendments; and 2) technical considerations regarding gravel pits and groundwater resources.

### **Process**

The draft ordinance amendments state that:

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

From our discussion, it is obvious that the material site work group did not operate on a level playing field, but rather produced its findings through majority vote. In my opinion, this is a fatal flaw of the process that resulted in the current proposals.

As background, I have been involved in two work groups regarding very complex and controversial topics that were highly successful as a result of operating on a level playing field. By this I mean that all decisions, large and small, were made by consensus, not majority rule.

In the 1980s, there was considerable concern over potential and actual groundwater and water well contamination issues on the Kenai Peninsula related to the oil and gas industry. The result was that I, as an employee of the Alaska Division of Geological and Geophysical Surveys, co-

5701 PENNY CIRCLE, ANCHORAGE, AK, 99516

[jamunter@arctic.net](mailto:jamunter@arctic.net)

PHONE (907) 345-0165; FAX (907) 348-8592

chaired the Kenai Peninsula Groundwater Task Force. This task force obtained considerable funding from the oil and gas industry that was operating on the peninsula at the time to conduct groundwater studies to better understand groundwater resources and disposal sites such as the Sterling Special Waste Management Site. The condition placed on the task force by industry representatives in order to participate and provide funding was that of a "level playing field". While sometimes it took quite a bit of time to achieve consensus, the results were durable and not very controversial.

More recently, the Alaska Department of Environmental Conservation initiated a statewide effort to regulate the drilling of single-family domestic wells. A Stakeholders Working Group (SWG) was convened to explore the issues, and again, all work was conducted by consensus. The group was hugely successful in developing a set of Best Management Practices for drilling private single-family wells, in developing another document for properly decommissioning wells and in creating a new website with numerous resources for well owners:  
<https://dec.alaska.gov/eh/dw/dwp/private-wells/>.

I bring these examples to your attention because, in reviewing the proposed amendments and your comments, it is apparent that these proposed amendments are complex and controversial, often interrelate to one another, and would benefit greatly from more work by a working group operating collaboratively by consensus prior to being considered for adoption.

It is worth noting that in our society ever-tightening environmental regulations are typically a one-way street. The long-term harm from over-regulating resource extraction is increasing costs and increasing scarcity of the resource on the open market. Sand and gravel resources are fundamentally important to the orderly economic development of the Kenai Peninsula Borough, are not highly transportable from other locations, and are dependent on time-limited extraction activities at most sites as a result of resource depletion. In south-central Alaska, there are many examples of reclaimed former gravel pits (some with ponds) that are important assets for long-term community development and wildlife.

A working group operating by consensus should be afforded whatever time it takes to achieve results. They should self-organize, with Chairs or Co-Chairs selected on the basis of impartial administration of the group. A potentially long timeframe should be considered for this important work because the KPB currently has a functional ordinance governing gravel resource extraction to serve in the interim. While many would likely consider the existing ordinances imperfect, it seems that it is far more important to get revisions right, rather than to get them fast.

In a nutshell, the existing proposed amendments should be scrapped and the whole process should start over with a level playing field amongst all stakeholders who agree to work in a collaborative and productive atmosphere towards improvements to the existing ordinances.

### **Technical considerations**

There are many legitimate issues associated with gravel pits such as noise, dust, traffic, visual impacts, etc. which I will not address. One of the key concerns that commonly arises with gravel pits is impacts to groundwater or surface water resources. This is important, because while land

and gravel resources are typically privately owned, water resources in Alaska are reserved to the people for common use and responsibility for their management is delegated to agencies. Also, water has the uncanny habit of moving from place to place. So what happens to water at a gravel pit does not stay at the gravel pit.

The existing ordinance allows excavation into the water table under certain conditions. Proposed revisions by Kpac suggest loosening those restrictions and allowing more general mining of sand and gravel to a depth of up to 15 feet below the water table.

There is not a clear-cut answer to how mining of aggregate resources below the water table should be regulated. As described above, this should be subjected to deliberation by a stakeholder working group operating under consensus rules. Below, however are some considerations.

First, mining resources below the water table is not inherently "bad" or "not permissible" by agencies. The recently completed and approved Environmental Impact Statement for the proposed Donlin gold mine in southwest Alaska, for example, proposes digging an open pit about two miles long, one mile wide and more than 1/4 mile deep that would fill almost to the brim after mining to form a pit lake. With mining below the water table, however, precautions are warranted to protect nearby users of groundwater and potentially-affected surface water resources, wetlands and wildlife.

Throughout south-central Alaska, and notably in the Anchor Point area, numerous old gravel pits are now flooded to form small lakes or ponds. Some of these features provide wildlife habitat and potential visual and recreational enhancement for neighboring homes and businesses.

During gravel pit operations, one of the largest concerns about groundwater contamination comes from accidental fuel spills. All gravel pits should have rigorous and robust measures in place to prevent such spills and some degree of capacity to clean up spills if they occur.

The current ordinance calls for a two-foot vertical separation between the bottom of a pit and the seasonal high water table under most conditions. The rationale for this separation is not clear. In the event of a sizeable fuel spill, such a buffer would not be very useful in preventing fuel from reaching the water table. In a gravel pit, fuel would tend to infiltrate vertically downward from the spill point and "pancake" out on the surface of the water table two feet or more below the ground. The pore-space storage that would capture spilled fuel before reaching the water table could be as low as about 10 gallons. Once a spill encountered the water table, dissolved fuel components would begin to migrate in a downgradient direction along with the groundwater. To be most effective, cleanup should be rapid and may entail excavating a large quantity of contaminated sand and gravel. In contrast, if a fuel spill reached a gravel pit pond, the resulting sheen and/or floating product would likely be immediately obvious. Sorbents and/or booms stored on-site could be rapidly deployed to contain and mop up the bulk of the contamination.

Some perspective on regulatory requirements for two- or four-foot separation to the water table may be useful. It is a common regulatory requirement that the distance between the bottom of a septic system leachfield and the top of the seasonal high water table must be at least four feet.

The reason for this requirement is that wastewater percolating downward from leachfields needs to receive aerobic (i.e. oxygenated) subsurface treatment in the unsaturated zone between the bottom of the leachfield and the low-oxygen saturated sediments below the water table in order to treat and removed certain compounds and microorganisms from the wastewater. Such logic does not apply to gravel pits where no wastewater treatment occurs.

Part of Kpac's proposed revision to ordinances is that, in order to make wider and taller surrounding berms (10 ft high rather than 6 feet high) and simultaneously preserve the economic viability of extracting aggregate resources, excavation below the water table should be considered along with appropriate protective measures.

A consequence of extracting sand and gravel below the water table is that the total footprint of gravel pits in any given area may be reduced. This could occur because if there is a fixed market demand for aggregate the aggregate has to come from somewhere. If pits were able to extract an additional 17 vertical feet (two feet above and 15 feet below the water table) of aggregate resources from part of their operation, then it follows that fewer net acres of land surface would need to be disturbed to meet the market demand.

One useful protective measure for water table excavation would be the prohibited distance to surrounding water wells or even potential water well locations on nearby undeveloped property. A gravel pit should not "shadow" a potential well location on a nearby property such that the property is undevelopable using a well and a septic system. A large public water-supply well, for example, must be sited more than 200 feet from certain potential sources of contamination, and that distance should be considered as suitably applicable for private well distances from gravel pit ponds, as well.

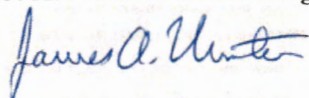
Another potential contaminant source from excavating below the water table is fine silt or clay that could become entrained in groundwater and travel some distance towards a well. Again, a protective distance to surrounding wells, especially if groundwater flow directions can be determined, would likely be the most practical way of reducing risk from entrained silt or clay in groundwater.

The concept of requiring the bottom of an excavation to be 15 feet above nearby private well intake openings is only marginally protective. This is because, if a contaminant plume should develop in groundwater, lateral and vertical dispersion (i.e. spreading) of the plume could readily exceed this amount. Also, the construction details of nearby wells are not always known.

Should you have any questions, please call me at 907-345-0165 or 907-727-6310 (cell).

Sincerely,

**J. A. Munter Consulting, Inc.**



James A. Munter, CPG

Certified Ground Water Professional No. 119481

Alaska Licensed Professional Geologist No. 568

Comments on KPB materials site revisions

Page 4 of 4

January 6, 2022

## Turner, Michele

---

**Subject:** FW: <EXTERNAL-SENDER>Fw: DEC Drinking Water regulations related to gravel extraction  
**Attachments:** image001.png

**From:** Kpac Association <[kpacassociation@yahoo.com](mailto:kpacassociation@yahoo.com)>  
**Sent:** Thursday, January 20, 2022 2:08 PM  
**To:** G\_Notify\_AssemblyClerk <[G\\_Notify\\_AssemblyClerk@kpb.us](mailto:G_Notify_AssemblyClerk@kpb.us)>  
**Subject:** <EXTERNAL-SENDER>Fw: DEC Drinking Water regulations related to gravel extraction

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Hi Johni,  
Please forward to the assembly.  
Ed Martin III  
President  
KPACA  
252-2554

----- Forwarded Message -----

**From:** Palmer, Charley (DEC) <[charley.palmer@alaska.gov](mailto:charley.palmer@alaska.gov)>  
**To:** [kpacassociation@yahoo.com](mailto:kpacassociation@yahoo.com) <[kpacassociation@yahoo.com](mailto:kpacassociation@yahoo.com)>  
**Cc:** Rypkema, James (DEC) <[james.rypkema@alaska.gov](mailto:james.rypkema@alaska.gov)>; Miller, Christopher C (DEC) <[chris.miller@alaska.gov](mailto:chris.miller@alaska.gov)>  
**Sent:** Monday, January 10, 2022, 10:06:57 AM GMT-9  
**Subject:** DEC Drinking Water regulations related to gravel extraction

Hi Ed Martin,

As mentioned before, we have little authority with respect to land use activities near a public water system in our current regulations, 18 AAC 80. For that reason, we did work with the Division of Water to update a Best Management Practices document found at <https://dec.alaska.gov/water/wastewater/stormwater/gravel/>, to include consideration of nearby public water systems. I've cc'd Jim Rypkema in case he has anything to add regarding the BMP document. I've also cc'd my supervisor, Chris Miller, just so he's aware of our communication.

As requested, below are relevant regulations that could apply:

**18 AAC 80.015. Well protection, source water protection, and well decommissioning.**

(a) A person may not

(1) cause pollution or contamination to enter a public water system; or

(2) create or maintain a condition that has a significant potential to cause or allow the pollution or contamination of a public water system.

(d) A person who owns or is responsible for a well, hole, or excavation into a water supply source or potential water supply source for a public water system shall use appropriate methods as follows to protect the water supply source as required under (a) of this section:

(1) if the well, hole, or excavation is either active or temporarily inactive, the person shall maintain the well, hole, or excavation using appropriate methods, including methods set out in (b) of this section;

(2) if the well, hole, or excavation is permanently inactive or abandoned, the person shall protect, seal, or fill the well, hole, or excavation using appropriate methods approved by the department as set out in (e) of this section;

(3) in this subsection “wells, holes, or excavations” include

(A) a well that may or may not be used for potable water;

(B) a hole drilled, augured, or jetted for the purpose of subsurface exploration or sampling;

(C) a cathodic protection well; or

(D) another form of excavation that might contaminate a public water supply source.

#### **18 AAC 80.020. Minimum separation distances.**

(a) A person may not construct, install, maintain, or operate a public water system unless the minimum separation distances in Table A, in this subsection, are maintained between a potential source of contamination and a drinking water source for the public water system.



**TABLE A.**  
**Minimum Separation Distances<sup>a</sup> Between Drinking**  
**Water Sources and Potential Sources of Contamination**  
**(Measured horizontally in feet)**

Type of Drinking Water System	
Potential Sources of Contamination	Community Water Systems, Non-transient Non-Community Water Systems, and Transient Non-Community Water Systems
Wastewater treatment works, <sup>b</sup> wastewater disposal system, <sup>b</sup> pit privy, <sup>b</sup> sewer manhole, lift station, cleanout	200
Community sewer line, holding tank, <sup>b</sup> other potential sources of contamination <sup>c</sup>	200
Private sewer line, petroleum lines and storage tanks, <sup>d</sup> drinking water treatment waste <sup>e</sup>	100

Notes to Table A:

<sup>a</sup> These minimum distances will be expanded, or additional monitoring will be required under 18 AAC 80.020(b) and (e)(2).

<sup>b</sup> Distance to a drinking water source is measured from the nearest edge of the drinking water source to the nearest edge of the potential source of contamination.

<sup>c</sup> Other potential sources of contamination include [but are not limited to] sanitary landfills, domestic animal and agricultural waste, and industrial discharge lines.

<sup>d</sup> The minimum separation distances for petroleum storage tanks do not apply to tanks that contain propane, or to above-ground storage tanks or drums that, in the aggregate, have a storage capacity of less than 500 gallons of petroleum products, and that store only petroleum products necessary for the operation and maintenance of pumps, power generation systems, or heating systems associated with a potable water source.

<sup>e</sup> Drinking water treatment wastes include the backwash water from filters and water softeners, and the reject water from reverse osmosis units.



(b) The department will require a greater separation distance than that required by Table A in (a) of this section if the department determines that additional distance is necessary to protect surface water, groundwater, or a drinking water source. The department will make this decision after considering soil classifications, groundwater conditions, surface topography, geology, past experience, or other factors relevant to protection of surface water, groundwater, or drinking water.

Regards,



**Charley Palmer**

Hydrologist 3

*FAA Certified sUAS (drone) Pilot*

DEC-EH | Drinking Water Program

Drinking Water Source Protection

PHONE 907-269-0292

[charley.palmer@alaska.gov](mailto:charley.palmer@alaska.gov)

555 CORDOVA STREET

ANCHORAGE, AK 99501

**Turner, Michele**

---

**Subject:** FW: <EXTERNAL-SENDER>Fw: Gravel pits with waterbodies

**From:** Kpac Association <[kpacassociation@yahoo.com](mailto:kpacassociation@yahoo.com)>  
**Sent:** Thursday, January 20, 2022 2:11 PM  
**To:** G\_Notify\_AssemblyClerk <[G\\_Notify\\_AssemblyClerk@kpb.us](mailto:G_Notify_AssemblyClerk@kpb.us)>  
**Subject:** <EXTERNAL-SENDER>Fw: Gravel pits with waterbodies

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Hi Johni,  
Please forward to the assembly as comment on 2021-41  
Ed Martin III  
President  
KPACA  
252-2554

----- Forwarded Message -----

**From:** Peterson, Ryan E (DEC) <[ryan.peterson@alaska.gov](mailto:ryan.peterson@alaska.gov)>  
**To:** Kpac Association <[kpacassociation@yahoo.com](mailto:kpacassociation@yahoo.com)>  
**Cc:** Wilfong, David L (DEC) <[david.wilfong@alaska.gov](mailto:david.wilfong@alaska.gov)>; Bear, Tonya (DEC) <[tonya.bear@alaska.gov](mailto:tonya.bear@alaska.gov)>  
**Sent:** Friday, January 7, 2022, 01:34:23 PM GMT-9  
**Subject:** RE: Gravel pits with waterbodies

Good Afternoon Ed,

Thank you so much for the inquiry. In regards to your question of what applicable regulations of the wastewater disposal regulations 18 AAC 72 could apply during the development of a materials site resulting in the creation of surface water and/or steep slopes, the sections that come to mind are:

18 AAC 72.020(b) which goes over separation distances from a wastewater disposal system to surface water sources; and

18 AAC 72.035(9) which goes over separation distances from a conventional onsite system to a ground surface slope greater than 25 percent with a drop in the surface height greater than 10 feet.

These will cover most private residential systems. If the nearby property or development is a commercial facility, additional restrictions based on site specific considerations may apply.

Please let me know or the Soldotna wastewater review engineer Dave Wilfong, 262-3405, [david.wilfong@alaska.gov](mailto:david.wilfong@alaska.gov), know if you have any additional questions. Thank you!

Ryan Peterson  
Dept of Environmental Conservation / Division of Water  
Engineering Support and Plan Review Section  
43335 Kalifornsky Beach Road, STE 11 Soldotna AK 99669  
[ryan.peterson@alaska.gov](mailto:ryan.peterson@alaska.gov)  
Phone: 907-262-3402 Fax: 907-262-2294  
[septic.alaska.gov](http://septic.alaska.gov)

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

From: Kpac Association <[kpacassociation@yahoo.com](mailto:kpacassociation@yahoo.com)>

Sent: Friday, January 7, 2022 7:24 AM  
To: Peterson, Ryan E (DEC) <[ryan.peterson@alaska.gov](mailto:ryan.peterson@alaska.gov)>  
Subject: Gravel pits with waterbodies

CAUTION: This email originated from outside the State of Alaska mail system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Ryan. Per our conversation yesterday, could you write me back something referring to the DEC waste water divisions regulations regarding waterbodies and slopes that could occur in the development of a material site? Thanks, Ed.

Sent from my iPhone

02021-41

**Turner, Michele**

---

**Subject:** FW: <EXTERNAL-SENDER>Fw: [External Email]Info on gravel pit habitat  
**Attachments:** Gravel Pit Ponds as Habitat Enhancement for Juvenile Coho Salmon pnw\_gtr212.pdf;  
Guidelines for Gravel-Pit Wetland Creation 0653-Prange.pdf; Nancy St Article.pdf; Nancy  
St As-Built-lowres (002).pdf

**From:** Kpac Association <[kpacassociation@yahoo.com](mailto:kpacassociation@yahoo.com)>  
**Sent:** Thursday, January 20, 2022 2:03 PM  
**To:** G\_Notify\_AssemblyClerk <[G\\_Notify\\_AssemblyClerk@kpb.us](mailto:G_Notify_AssemblyClerk@kpb.us)>  
**Subject:** <EXTERNAL-SENDER>Fw: [External Email]Info on gravel pit habitat

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,

Could you send this to the assembly for comment on 2021-41? It is from the forest service about some amazing uses they have done with old gravel pits that have been excavated into the water table. Reclamation benefits and options.

Ed Martin III  
President  
KPACA  
252-2554

----- Forwarded Message -----

**From:** Cross, Adam -FS <[adam.cross@usda.gov](mailto:adam.cross@usda.gov)>  
**To:** Kpac Association <[kpacassociation@yahoo.com](mailto:kpacassociation@yahoo.com)>  
**Sent:** Thursday, January 13, 2022, 02:40:43 PM GMT-9  
**Subject:** RE: [External Email]Info on gravel pit habitat

Good Afternoon Ed,

I wanted to share some of the literature my co-workers located. Some of it is a bit older but still relevant. Unfortunately, the FS has not published much if anything about the work of transitioning gravel ponds into salmon habitat or even recreational areas in Portage Valley. The area is a great "show me" example for folks who may be interested.

I hope the attached will be helpful.

Best Regards,  
Adam

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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.

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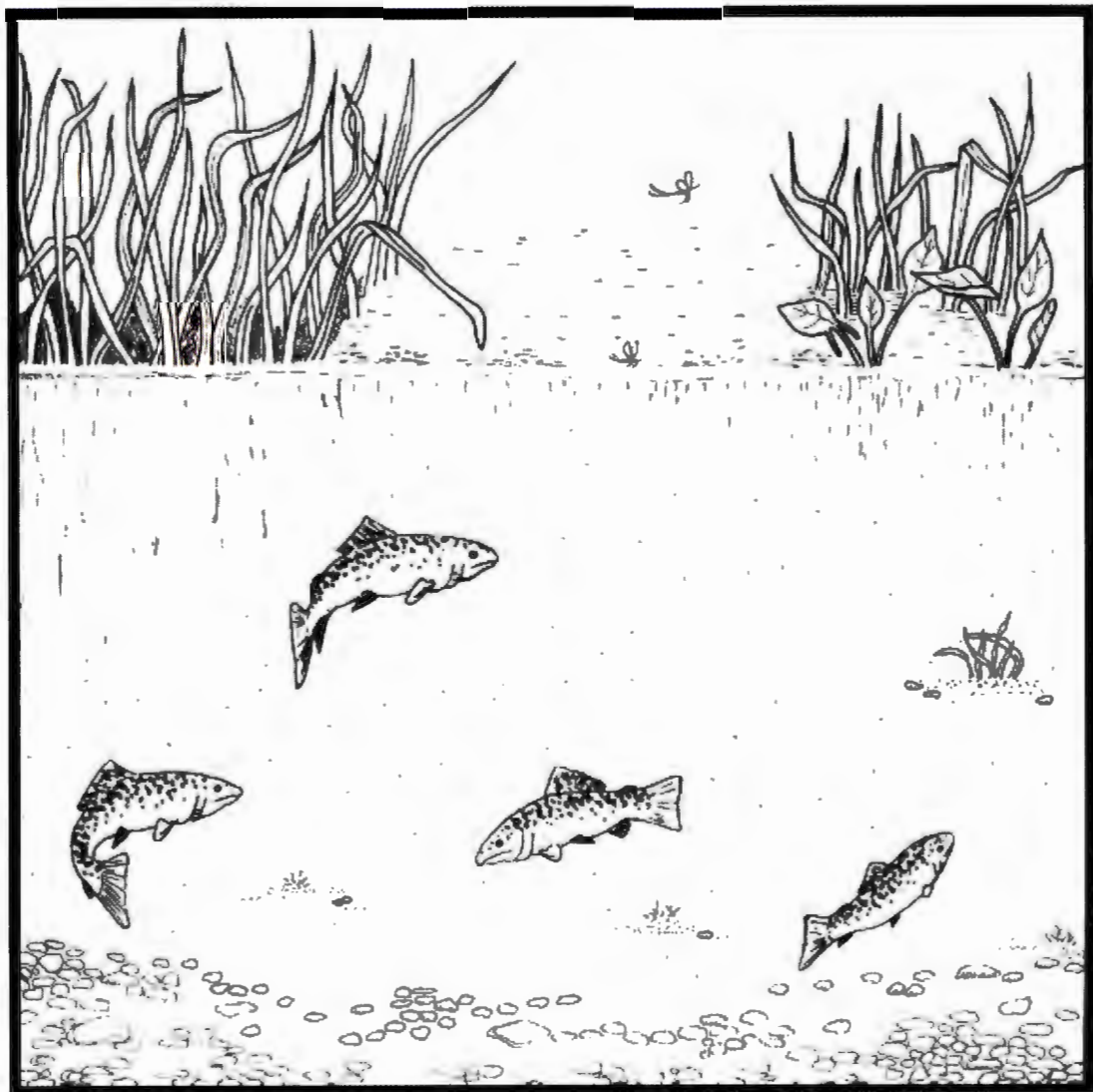
General Technical  
Report

PNW-GTR-212



# Gravel Pit Ponds as Habitat Enhancement for Juvenile Coho Salmon

Mason D. Bryant



**Author**

MASON D. BRYANT is a research fishery biologist, Forestry Science Laboratory, P.O. Box 20909, Juneau, Alaska 99802.



## Abstract

**Bryant, Mason D. 1988.** Gravel pit ponds as habitat enhancement for juvenile coho salmon. General Technical Report PNW-GTR-212. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 10 p.

Gravel pits built during road construction in the early 1970's near Yakutat, Alaska, filled with water and were connected to nearby rivers to allow juvenile salmonids to enter. Seasonal changes in population size, length and weight, and length frequencies of the coho salmon population were evaluated over a 2-year period. Numbers of coho salmon fluctuated, but two of the ponds supported high populations, more than 2,000 fish, throughout the study. These ponds appeared to support coho salmon throughout the winter. The range of physical measurements of the ponds did not seem to account for differences in numbers of salmon, but low concentrations of dissolved oxygen were detected in all ponds near the bottom. Aquatic vegetation, water exchange rate, and access may have affected the number of coho salmon in the less-productive ponds.

Keywords: Fish habitat, salmonids, stream habitat management, southeast Alaska, Alaska (southeast).

## **Contents**

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## Introduction

Road construction and forest development are commonly associated with detrimental effects on salmonid habitat; with proper planning, however, such effects can be avoided. In this paper, I discuss a method to improve salmonid production in conjunction with road construction.

Juvenile coho salmon (*Oncorhynchus kisutch*) are aggressive, invasive, and mobile (Allee 1974, Chapman 1962, Skeesick 1970). Sheridan<sup>1</sup> suggested that the gravel pits, created during road construction on the glacial outwash of the Yakutat forelands (Alaska Department of Fish and Game 1984), would be exploited by juvenile coho salmon if the ponds were connected to river systems containing coho salmon. Several gravel pits that had filled with water were connected by artificial channels to nearby rivers during the 1970's. Coho salmon fry were observed in the ponds, but no systematic effort was undertaken to estimate the number of fish in the ponds or to evaluate their effectiveness as rearing habitat.

The purpose of this study was to determine if these ponds were suitable rearing habitat for juvenile coho salmon. Numbers of juvenile coho in four ponds were estimated over several seasons. Size and ages were determined. Selected chemical and physical measurements were taken on the ponds to identify factors that could account for differences in salmon populations.

Although ponds are not generally associated with coho salmon habitat, beaver ponds and riverine ponds have been identified as productive coho habitat in Alaska and in Washington in recent years<sup>2</sup> (Bryant 1984, Peterson 1982). Russell and Schramek (1984) found about 2,500 coho salmon fry and 500 fingerlings in a gravel pit associated with a beaver pond during the summer of 1977. They did not follow the populations through the winter, however. Both Peterson (1982) and Russell and Schramek (1984) reported seasonal migrations to and from the ponds. Although most of these studies were on natural ponds, their results indicate that ponds created by gravel borrow pits can support juvenile coho salmon; such ponds may be an inexpensive method to increase coho salmon production.

## Methods

Four ponds-Nine-Mile, Green, Twenty-Two-Mile, and Beanbelly-were sampled monthly from July through October 1983 and during spring or early summer and autumn in 1984 and 1985. Minnow traps (mesh size = 6.3 mm) were baited with salmon eggs and distributed along the edge of the ponds, usually within a few meters of the bank, 1 to 2 m deep. A few were placed in the middle of the ponds. Between 26 and 30 traps were sufficient to sample each of the ponds. In 1984, Twenty-Two-Mile Pond was not sampled because of low coho salmon populations. Green Pond was not sampled in 1985 for the same reason. Traps were allowed to fish for 1 hour, long enough to capture a sufficient sample. Longer periods occasionally resulted in high mortalities. Mortalities incurred during handling were identified and removed from the experiment.

All fish were identified and measured (total length). Scales and weights were taken from a subsample of the salmonid population. Salmonids were marked by punching a hole in the caudal fin. In the fall of 1984, salmonids were marked by freeze branding (Bryant and Walkotten 1980).

---

<sup>1</sup> Sheridan, W.L. 1970. Coho salmon habitat improvement-on glacial outwash plains. U.S. Department of Agriculture, Forest Service, Region 10. Unpublished.

<sup>2</sup> Sanders, G.H. Movement and territoriality in juvenile coho salmon (*Oncorhynchus kisutch*) in a southeast Alaska pond. Alaska Department of Fish and Game, Juneau, AK. Unpublished report.

Population size was estimated either with the Schnabel multiple mark and recapture method or the Bailey modification of the Peterson estimate (Ricker 1975). The Schnabel method was used in all the 1983 samples. The method varied in later samples because of limited sampling time. The multiple mark and recapture experiments were conducted over a period of 5 days or less. Emigration and immigration were negligible during the summer. During of the summer sampling periods, water levels were low and streams into and out of the ponds were either not running or had small flows. Increased rainfall in the autumn resulted in higher flows, but mark and recapture samples were done over a period of 2 or 3 days to minimize the effect of fish moving into or out of the ponds.

All four ponds were surveyed to determine surface area. Depth profiles were not made, but maximum depths were determined during secchi disk and oxygen measurements. Temperature and oxygen were measured with a YSI<sup>3</sup> oxygen meter in 1983 and 1984. Oxygen measurements in June 1985 were made with the Alsterburg modification of the Winkler method (U.S. Environmental Protection Agency 1974).

## Results

The number of coho salmon in Nine-Mile and Beanbelly Ponds increased from July to October in 1983. Each pond supported more than 3,500 coho salmon in the fall of 1983 (fig. 1). Green and Twenty-Two-Mile Ponds were not sampled after October 1983 because few fish were captured. The number of coho salmon in Green Pond declined from an estimated 2,700 in August to a point where no estimate was possible in October (fig. 1). The number of coho salmon in Twenty-Two-Mile Pond was consistently low.

<sup>3</sup> Use of trade names is for the information and convenience of the reader. Such use does not imply endorsement by the U.S. Department of Agriculture of any product or service to the exclusion of others that may be suitable.

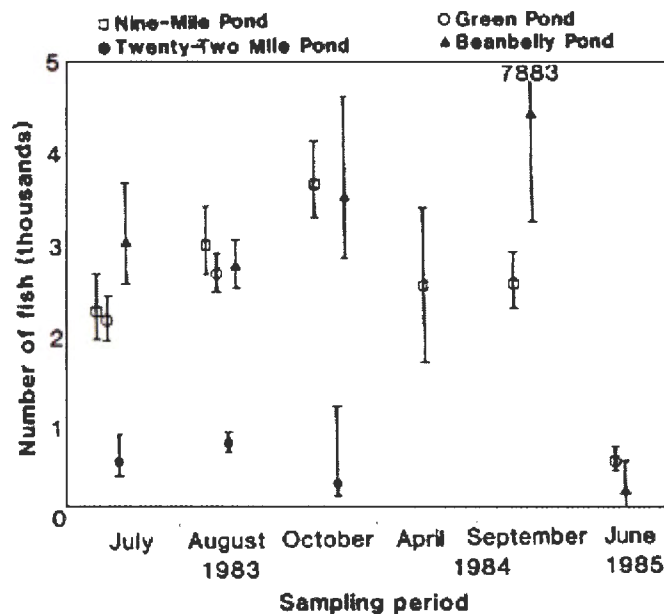


Figure 1—Population estimates of coho salmon captured in Nine-Mile, Green, Twenty-Two-Mile, and Beanbelly Ponds from 1983 to 1985.

Population estimates in Nine-Mile and Beanbelly Ponds were made October 1983, April 1984, September 1984, and June 1985 to assess overwinter use of the ponds. Beanbelly Pond was not sampled in April, 1984 because snow on the road made it inaccessible. In Nine-Mile Pond, the number of juvenile coho salmon decreased from 3,666 to 2,547 between October 1983 and April 1984. Fin punches applied in October were observed in the April sample; therefore, coho salmon overwintered in the pond, but emigration and immigration likely occurred between the sample periods. Because of heavy snow, the ponds were not sampled until the 1st week in June 1985. The low populations in both ponds in June may be attributed to smolt migration. Comparison of length frequencies in September 1984 and June 1985 in Beanbelly Pond corroborate this migration (fig. 2). In September 1984, the median length of coho salmon in Beanbelly Pond was 88 mm (total length), and more than 10 percent of the total catch was longer than 100 mm; in June 1985, the median length was 82 mm, and less than 2 percent of the total catch was longer than 100 mm.

A few coho salmon marked with freeze brands in September 1984 were recovered from both ponds in June 1985, but they numbered less than 1 percent of the total catch; therefore, overwinter survival cannot be estimated. Recovery of marked fish in June 1985 and the persistence in the ponds of coho salmon that were at least 1 year old in the spring and early summer of 1984 and 1985 indicate that the ponds are used over the winter.

Recruitment to the ponds appears to be the result of upstream migration of juvenile coho, except in Beanbelly Pond which is fed by a stream with spawnable habitat. Recruitment of fry into the ponds appears to begin in June. During May 1984, fewer than 5 percent of the coho salmon caught in Nine-Mile Pond were smaller than 62 mm (total length); by September, more than 16 percent were smaller than 62 mm (fig. 3). Between July and September, the percentage of smaller coho salmon increased slightly in Nine-Mile Pond, indicating that fry moved into the pond. In Beanbelly Pond, the percentage of smaller coho salmon decreased slightly from July to September in 1983, suggesting that smaller fish did not move into the pond and that the difference in size was the result of growth.

Significant differences occurred among the length-weight regressions computed for the coho salmon captured in the four ponds in July and August 1983 (table 1). Throughout the analysis, Nine-Mile Pond shows a consistently higher slope than the other ponds, indicating more robust fish and better growth. In September 1983, large differences appear in the slope of the regression for Twenty-Two-Mile Pond (2.2) compared to those of Nine-Mile and Beanbelly Ponds (2.8 and 2.7). The lack of significance in September 1983 may result from the smaller sample size in Twenty-Two-Mile Pond compared to that in the other two ponds.

Although depths of each pond varied, each had a relatively uniform profile tapering from a deep end to a shallow end with steep sides. The least productive pond, Twenty-Two-Mile, was also the shallowest. Green Pond and Nine-Mile Pond were similar in depth and shape (table 2); both are connected to the Situk River. Beanbelly, the largest and deepest of the four ponds, has an irregular shape and is more like a natural pond. It is fed by a perennial stream.

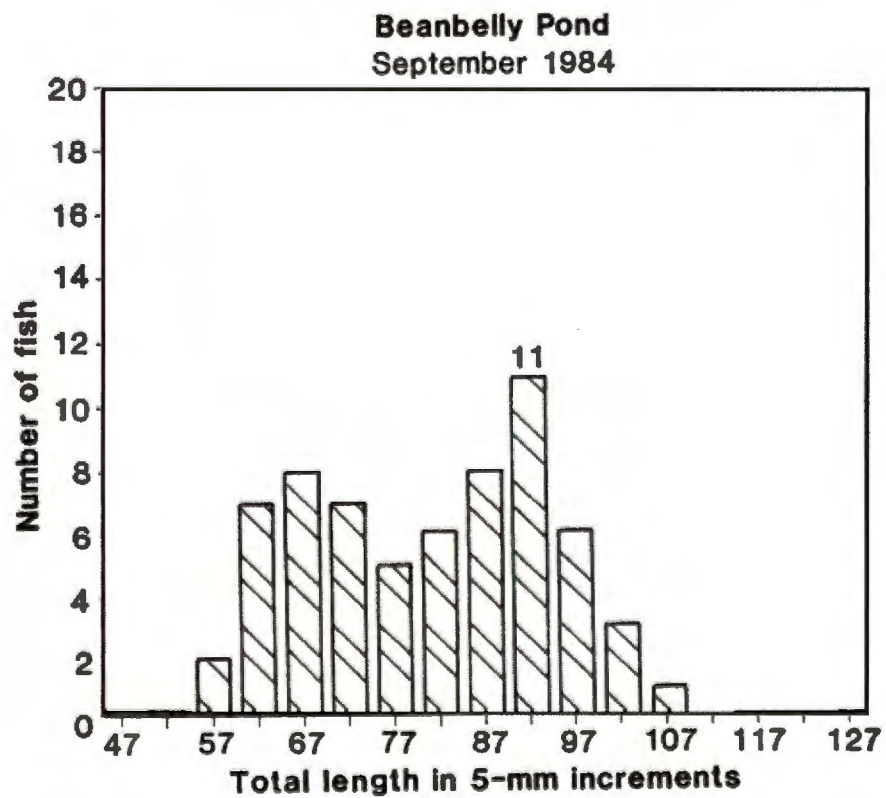
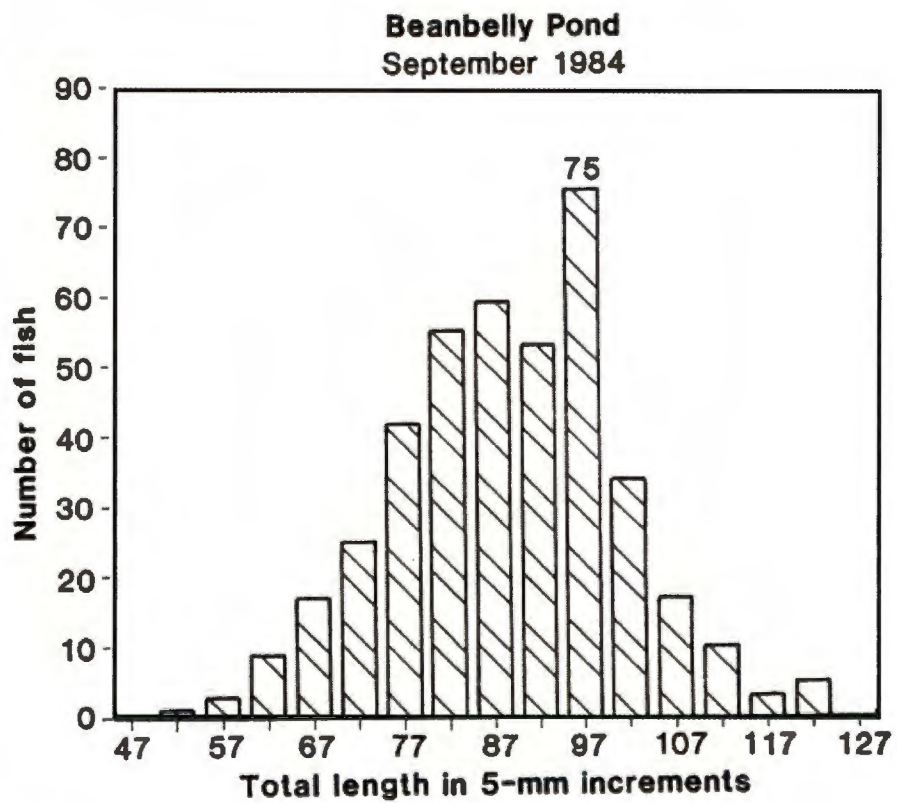


Figure 2—Length frequency distribution of coho salmon captured in Beanbelly Pond in September 1984 and June 1985.

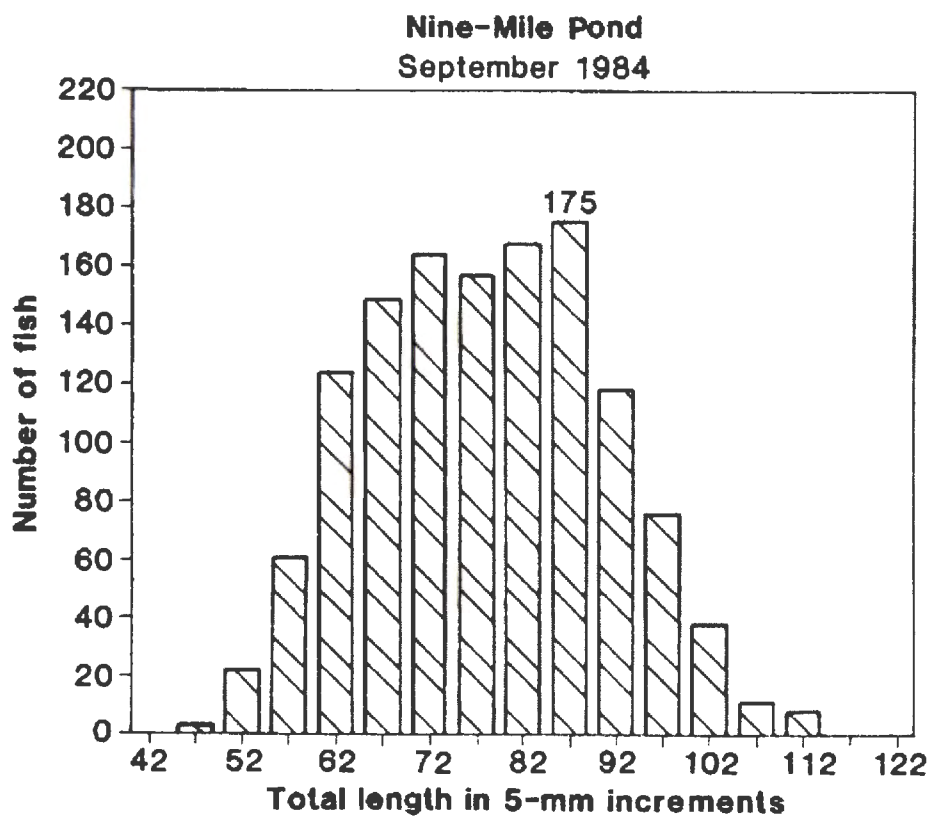
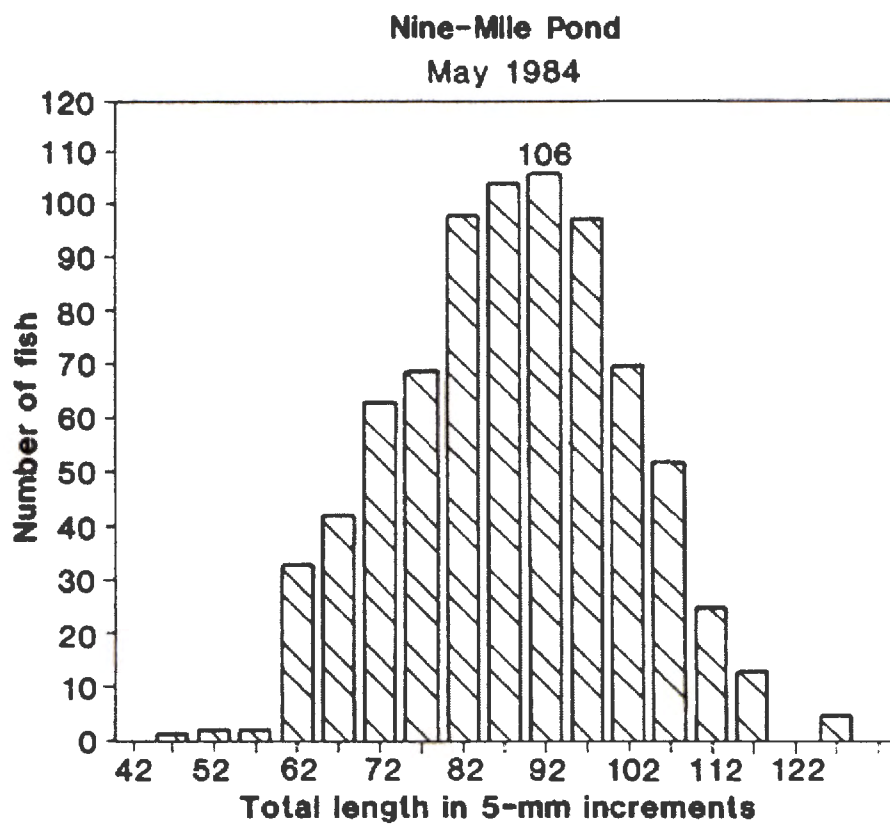


Figure 3—Length frequency distribution of coho salmon captured in Nine-Mile Pond in May and September 1984.



Table 1-Differences among ponds in length-weight regressions

Date and pond	Intercept	Slope	Significance	
	a	b	Level	Slope
July 1983:				
Nine-Mile	-5.3683	3.157		
Green	-4.0452	2.482	≤ .05	≥ .05
Twenty-Two-Mile	-4.1865	2.5663		
Beanbelly	-3.9622	2.4281		
August 1983:				
Nine-Mile	-5.1244	3.0233		
Green	-4.153	2.5325	≤ .05	≥ .05
Twenty-Two-mile	-4.844	2.867		
Beanbelly	-5.1789	3.0326		
Sept. 1983				
Nine-Mile	-4.783	2.8378		
Green	—	—		
Twenty-Two-Mile	-3.6585	2.2101	≤ .05	≥ .20 (NS)
Beanbelly	-4.5538	2.7266		
April 1984				
Nine-Mile	-5.1337	2.9813		
Green	-4.6439	2.7453	≤ .05	≥ .05
Twenty-Two-Mile	—	—		
Beanbelly	—	—		

— = no data: NS = not significant

Table 2—Yakutat gravel pit ponds morphology

	Area	Volume <sup>a</sup>	Maximum depth	Average depth <sup>b</sup>
	<u>Square meters</u>	<u>Cubic meters</u>	<u>-----Meters-----</u>	
Green	7,644	9,500	2.5	1.25
Nine-Mile	10,010	12,513	2.5	1.25
Twenty-Two-Mile	27,972	27,513	2.0	1.0
Beanbelly	34,954	61,170	3.5	1.75

<sup>a</sup> Volume = area times average depth.

<sup>b</sup> Average depth = maximum depth divided by 2

Temperature and oxygen were slightly stratified in all ponds during the summer and winter. The ponds were isothermal in the spring and fall (fig. 4). Oxygen supply depends partly on the water-exchange rate in each of the ponds during periodic thaws throughout the winter. Oxygen levels near the bottom of the ponds were lowest during December but were above 5 p/m at the surface in all four ponds. The dissolved oxygen supply may have become critically low later in the winter after a thick layer of ice formed.

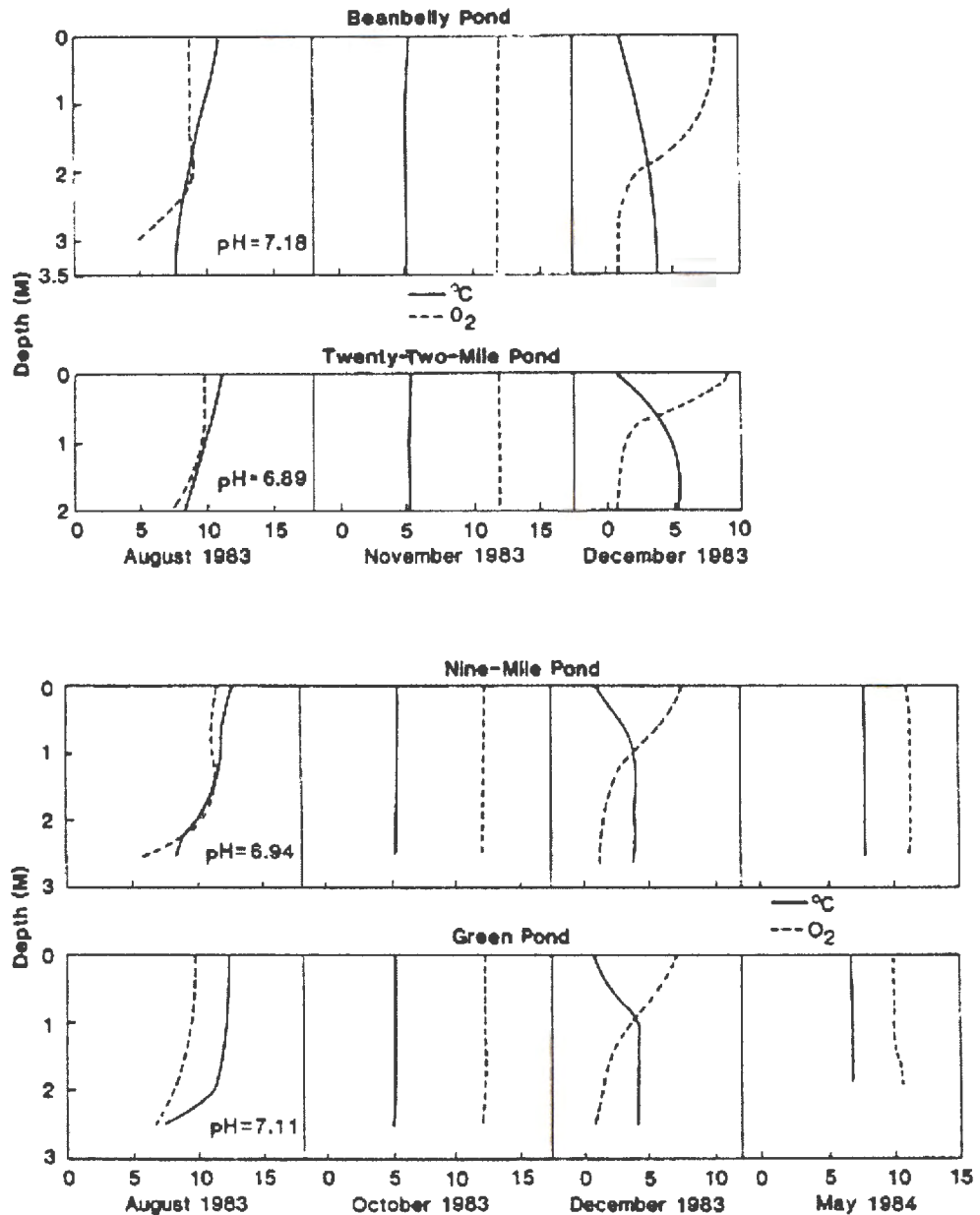


Figure 4—Seasonal temperature and oxygen profiles for Green, Nine-Mile, Twenty- Two-Mile, and Beanbelly Ponds.

## Discussion

All four ponds were used to a greater or lesser extent by juvenile coho salmon during the study. Even over the short period of this study, populations fluctuated from year to year. In Green Pond, the salmonid population virtually disappeared after the fall of 1983. The population at Twenty-Two-Mile Pond was consistently low. Beanbelly and Nine-Mile Ponds consistently supported the highest populations of coho salmon.

None of the morphological or chemical features measured during the study appear to account for the differences and changes in the coho salmon population in the ponds. A more likely explanation may be the connection between the ponds and the river. Both Nine-Mile Pond and Beanbelly Pond had well-defined channels between the ponds and the river. The outlet to Twenty-Two-Mile Pond was poorly defined. Neither Twenty-Two-Mile Pond nor Green Pond had a defined inlet channel. Although ground water is an important source of water for the ponds, flow of surface water into and out of the ponds may be an important factor determining the water quality of the ponds as habitat for juvenile coho salmon.

Because all juvenile coho salmon immigrated into the ponds, the channel between the river and the ponds is critical to their use by coho salmon. All ponds were apparently accessible at high-flow periods (spring and fall) to juvenile coho salmon in the adjacent rivers, but the less well-defined channels connecting Twenty-Two-Mile Pond and Green Pond may have contributed to the low populations in these ponds. A poorly defined channel has lower velocity and is less likely to be found by the fish. Once found, it may not offer a clear path to the pond.

The coho salmon in the less productive ponds appeared to be less robust than those in the other two ponds. Where significant differences among length-weight regressions occurred, the lower values were associated with the ponds that had fewer coho salmon; therefore, factors other than access may be affecting productivity in the ponds. Among possible factors that were observed but not evaluated in this study are food and competition. Food may be a limiting factor and the differences in length-weight ratios may reflect fewer aquatic organisms available for food in these ponds. Large populations of threespine sticklebacks (*Gasterosteus aculeatus*) were observed in all the ponds. Beanbelly, Nine-Mile, and Twenty-Two-Mile Ponds had a dense cover of aquatic plants, and the bottom of Green Pond was covered with a dense mat of algae. The dense cover of aquatic vegetation would contribute to a large stickleback population by providing excellent habitat for reproduction and cover for newly hatched sticklebacks. The effect of competition for space and food between sticklebacks and coho salmon was not studied. Aquatic plants and algal growth would also contribute to low concentrations of benthic dissolved oxygen during fall and winter as the vegetation died and began to decompose. In addition, sticklebacks may be able to tolerate lower dissolved oxygen concentration than coho salmon.

Timber along the bank was apparently not a factor in any of the ponds. Twenty-Two-Mile Pond was the only one with large trees along the bank. These trees did not appear to influence the pond. Willow (*Salix* sp.) and alder (*Alnus* sp.) were the dominant vegetation along the banks of the other ponds. Based on observations of numbers of coho salmon captured near vegetation in the water, coho salmon do not appear to prefer brush habitat associated with these ponds. Nevertheless, shrubs along the bank may provide cover and a source of terrestrial insects to coho salmon.

Although the results of this study show differences among the ponds, specific factors controlling numbers of coho salmon in the ponds were not identified. The range of morphological and chemical differences measured in the ponds did not appear to affect numbers of coho salmon. The ponds apparently provide habitat for juvenile coho salmon although low dissolved oxygen sometimes may increase mortality. Coho salmon apparently remain in the ponds through winter.

The design of artificial ponds for juvenile coho salmon habitat should include several important morphological features. Adequate water quality is necessary throughout the year, particularly during the winter. A perennial flow of surface water into the pond may satisfy this requirement. The second requirement is access. An effective method for providing both these features is to construct an upstream inlet from the stream to the pond and a downstream outlet from the pond to the stream. Other favorable features include an average depth greater than 2 meters and bank vegetation for shade and cover.

Additional study on the effects of competitive interaction between salmonids and other species such as sticklebacks, the role of aquatic vegetation as cover and its effect on water quality, and the effects of pond morphology and water exchange rates could improve the design of artificial ponds. As projects are effectively evaluated, design criteria will be improved to increase the effectiveness of similar ponds. Ponds have not been extensively used as an enhancement tool for increasing coho salmon production, but they offer a promising and often low-cost enhancement method.

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**Bryant, Mason D. 1988.** Gravel pit ponds as habitat enhancement for juvenile coho salmon. General Technical Report PNW-GTR-212. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 10 p.

Gravel pits built during road construction in the early 1970's near Yakutat, Alaska, filled with water and were connected to nearby rivers to allow juvenile salmonids to enter. Seasonal changes in population size, length and weight, and length frequencies of the coho salmon population were evaluated over a 2-year period. Numbers of coho salmon fluctuated, but two of the ponds supported high populations, more than 2,000 fish, throughout the study. These ponds appeared to support coho salmon throughout the winter. The range of physical measurements of the ponds did not seem to account for differences in numbers of salmon, but low concentrations of dissolved oxygen were detected in all ponds near the bottom. Aquatic vegetation, water exchange rate, and access may have affected the number of coho salmon in the less-productive ponds.

**Keywords:** Fish habitat, salmonids, stream habitat management, southeast Alaska, Alaska (southeast).

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# Recycled Soils Enhance Wetland Habitat in Juneau, Alaska

by Michele Elfers

*IN* disturbed ecosystems needing reclamation, excess materials from development projects offer new opportunities for wildlife habitat enhancement. The Nancy Street Wetland Enhancement Project pioneered a creative strategy to partner the development needs of a fill disposal site with desirable conservation goals. The project utilized clean native soils generated by a high school construction project in the Mendenhall Valley of Juneau, Alaska, to reclaim a 1950s era gravel pit into a functional wetland. Clean fill material was deposited and shaped to create mixed wetland topography, including a stream channel, deep and shallow water areas, and small islands. Plantings of emergent wetland, riparian, and upland vegetation improved habitat for fish and wildlife and water quality in what is part of a state designated impaired waterbody.

Located along Duck Creek in the Mendenhall Valley, the enhancement of the Nancy Street gravel pit was identified as a priority project in the Duck Creek Watershed Management Plan (National Marine Fisheries Service, 1999). Intense residential development over the past forty years in the Mendenhall Valley has impacted Duck Creek significantly. The increase of nonpoint source pollution, channelization, and above-grade stream crossings has degraded water quality and habitat. In 2002, the Alaska Biological Monitoring and Water Quality Assessment Program Report rated Duck Creek the lowest for habitat variables of all

streams studied in Southeast Alaska (Alaska Department of Environmental Conservation, 2003). Poor habitat quality has reduced anadromous fish populations such as coho and chum salmon, and has impacted habitat for the large number of mallards and other waterfowl that use these wetlands as refuge from nearby popular hunting zones.

In the 1950s and 1960s, gravel extraction created three adjacent, open water pits on the East Fork of Duck Creek. The most downstream pit is located at Nancy Street. Groundwater flowing into the pit carries dissolved iron from soil strata, which reacts with atmospheric oxygen upon reaching the surface. The resulting formation of iron oxide precipitate (iron "floc") decreases the concentration of dissolved oxygen in the water column, impacting aquatic inverte-

brates and fish. While not inherently toxic, iron floc also settles into the substrate, clogging gravel beds that might

**The gravel pit at Nancy Street is located less than one mile from the high school construction site, and the enhancement project opportunity required a substantial amount of fill that had previously not been available.**

otherwise provide good spawning habitat for fish.

The Engineering Department at the



Emergent wetlands are created along the perimeter of a deep water pool for juvenile coho salmon habitat.



City and Borough of Juneau (CBJ) initiated the wetland enhancement project in 2005 when designs for a new high school indicated a large amount of excess soil would be generated during construction. Transport of the fill for disposal would have required a three mile drive to a privately owned waste site. The gravel pit at Nancy Street is located less than one mile

**Using the Nancy Street pit as a fill disposal site, the CBJ Engineering Department charged the high school construction contractor a lower rate for fill disposal and used the revenue to recover a portion of the land purchase cost.**

from the high school construction site, and the enhancement project opportunity required a substantial amount of fill that had previously not been available. CBJ



The construction of a new high school contributed 64,000 cubic yards of clean fill to the wetland enhancement of the former gravel pit.

began coordinating with the U.S. Fish and Wildlife Service (USFWS) and the Natural Resources Conservation Service (NRCS) to use the clean native soil for wetland enhancement at the Nancy Street pit.

Consolidation of land ownership was the first step toward reclaiming the pit. CBJ owned most of the seven acre site, but a large parcel encompassing both open water wetland and upland areas was privately owned. The parcel was purchased for \$137,000. Using the Nancy Street pit as a fill disposal site, the CBJ Engineering Department charged the high

school construction contractor a lower rate for fill disposal and used the revenue to recover a portion of the land purchase cost. The cost to the CBJ of filling the Nancy Street site, including the land purchase, was \$319,000. The cost of the typical market alternative was \$572,000. By undertaking the wetland enhancement project partially funded by USFWS and NRCS cost share programs, the CBJ saved \$253,000 on the cost of the high school construction.

#### Site Planning:

To design and execute the fill disposal

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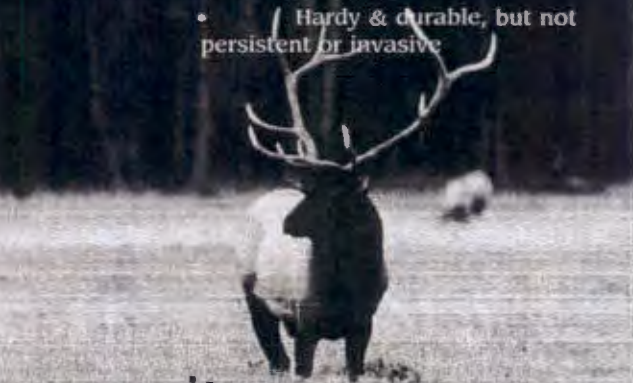
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and wetland enhancement project, the CBJ contracted the engineering firms Toner-Nordling Associates for the initial fill design and R&M Engineering, Inc. for the design development of the filling process. Glacier State Contractors, Inc. executed the design. To maintain flow through Duck Creek, a stream channel at a minimum of four feet deep was designed to meander through the wetland. From the perimeter of the wetland, shallow platforms, or marsh "fingers", were filled to allow for the planting of emergent marsh vegetation for fish and wildlife foraging and protective habitat. During construction, the fingers provided functional benefit by allowing access for dump trucks to the center of the wetland for filling. At each end of the wetland, two deep water areas were left in place to provide overwintering habitat for juvenile coho. After nine months of filling in 2005, 64,000 cubic yards were placed to create the wetland, resulting in increased savings for the CBJ.

An earthen dam was constructed to control water levels at the project site and in the two upstream pits. This occurred



Americorps workers, with a local youth agency, SAGA, transplanted over 5,000 native plants from nearby wetlands into the former gravel pit.

after the filling and revegetation phase to create more stable and drier conditions during construction and planting. A meandering outlet stream was excavated

to allow fish passage through the earthen dam. Both the dam and the outlet stream were constructed using an impermeable liner to prevent water loss. Layers of

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became an important component in gaining public approval and support of the project. Adjacent landowners initially viewed the enhancement project as disruptive, but through the process of filling, planting and trail construction, many neighbors and community members have expressed that the enhancement is an improvement to the neighborhood. It offers recreational opportunities for a neighborhood composed of streets and private property, and provides access to a successional landscape with a fantastic view of the Mendenhall Glacier.

To encourage neighborhood use of the site, CBJ and Trail Mix Inc, constructed a six foot wide gravel trail, and a deck was sited at the south end to capture a remarkable view across the wetland of the Mendenhall Glacier. The decking on the observation deck and boardwalk, railings, and benches were built with recycled plastic lumber. An island at the north end is accessed by a bridge and boardwalk and offers a bench and viewing point south. The 70' bridge is a steel gangway recycled from a CBJ Docks and Harbors improvement project.

Throughout the construction process, volunteers donated time, materials and money to the project. Neighbors began appearing during the summer construction to comment on how excited they were about the project. The CBJ Ports and Harbors Department donated the bridge and benches and the U.S. Coast Guard Engineering Division volunteered to construct the observation deck.

As a result of the success of this project, a similar process is planned for the Allison Pond upstream of the Nancy Street Wetland. The process will be improved based on the lessons learned and applied to the Allison Pond site needs. The strategy and process developed by the Engineering Department at the CBJ has saved the taxpayer's money by pioneering this alternative option to fill disposal. The support of resource agencies, local organizations, and citizen volunteers has enhanced habitat for fish and wildlife and reclaimed a valuable community resource. **L&W**

For more information contact Michele Elfers, City & Borough of Juneau, Alaska, (907)586-0931, e-mail: [michele\\_elfers@ci.juneau.ak.us](mailto:michele_elfers@ci.juneau.ak.us).

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**Land and Water**

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cobbles and gravel for spawning were placed on top of the stream channel liner to create riffles and shallow pools.

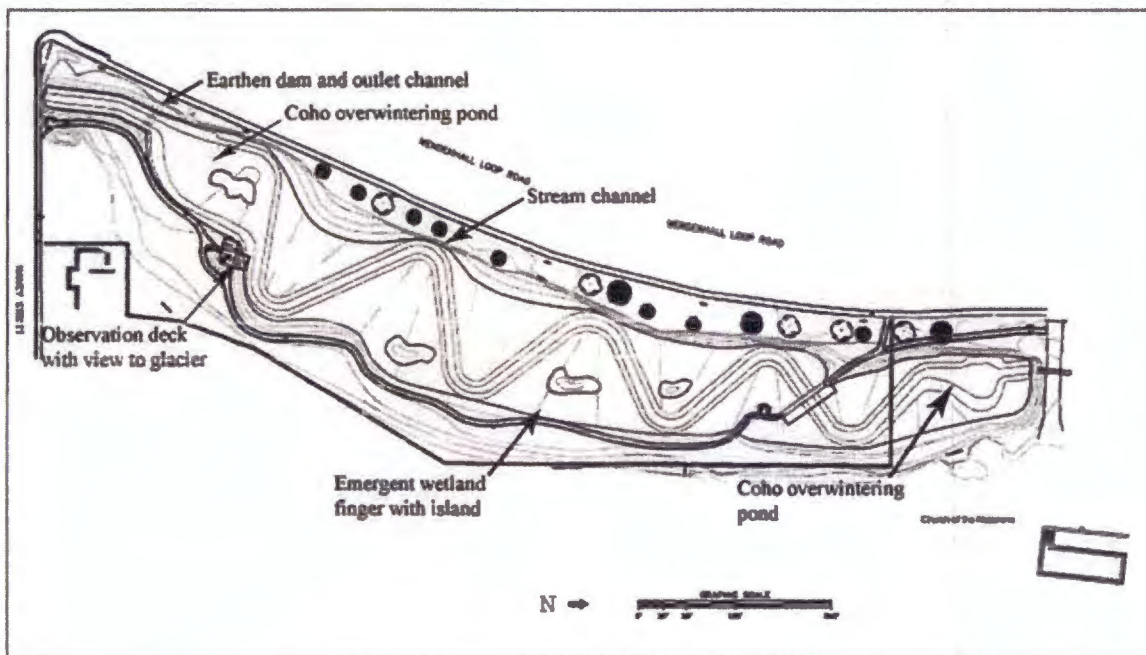
The site design and implementation plans of the filling process determined both habitat improvement and operational efficiency. By filling and completing

tritic zones based on the depth of water in which they grow. Although the Nancy Street Wetland is primarily ground water fed, precipitation and surface runoff influence the water level and will therefore affect the survival and composition of the site's wetland plant community.

Alaska and British Columbia. All plant work was done by hand using shovel bulb planters, and pulaskis.

#### Lessons Learned:

To improve the revegetation process for future projects, better planning for irrigation should be in place prior to transplanting. As mentioned earlier, the dam was constructed after the completion of the planting of the emergent vegetation. Revegetation occurred between the months of April and August when Juneau received thirty inches of rain. However, a two-week period of unusually warm, sunny weather desiccated the high marsh area. Watering was necessary, but difficult to accomplish on such a large site. Crews used buckets and a garden quality



each "finger" and section of the wetland individually, greater variety and attention to each landform was introduced. Initially the option of filling the entire site and then returning to dredge the stream channel had been considered, but would have resulted in less diversity of habitat and less attention to the design details. The chosen approach facilitated meeting the design elevations to within 3 inches to provide necessary habitat for emergent wetland plants—a difficult task on a large project where over 60,000 cubic yards of fill are being placed.

Revegetation planning began in early 2006 by researching and evaluating three locally constructed wetlands and interviewing local naturalists experienced in reclamation and revegetation projects. There was no previously documented information on constructed wetlands in Southeast Alaska, so this project is being carefully monitored to provide baseline information that can be used for development of future wetland enhancement projects. For the purpose of planting design, plants were divided into concen-

During the planting season of 2006, volunteers from the community and Americorps workers funded by USFWS planted over 5,000 emergent plugs and cuttings, and 150 lbs of grass and forb seeds. As there are no native plant nurseries in Juneau or Southeast Alaska, the workers transplanted plugs and cuttings from local wetlands to maintain native gene stock and minimize the possibility of importing invasive plants. Seeds were purchased or donated from sources in

gasoline-powered water pump to irrigate the wetland. Some plant mortality occurred, and it is likely that a prolonged period of hot, dry weather would have significantly impacted plant survival. To prevent this from happening on future projects, fill and topsoil with a higher organic content than what was used in this project would help retain moisture. Other strategies include controlling water levels to keep soil saturated while planting, or the delaying of planting until July when precipitation is more reliable and frequent in Juneau.

There is some concern that the water level is higher than the designed level. However, the rainfall was higher than average in 2006, so it is difficult to tell the water levels in the wetland will drop. For this reason, designing a dam with adjustability to account for the discrepancy in water level would improve the function and success of the project.

#### Recreational Use of the Site:

The design and development of a community trail through the wetland

**There was no previously documented information on constructed wetlands in Southeast Alaska, so this project is being carefully monitored to provide baseline information that can be used for development of future wetland enhancement projects.**

# Guidelines for Gravel-Pit Wetland Creation

by

Bonnie Baldwin Prange

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**Abstract.** The frequent colonization of the margins of abandoned and unreclaimed wet sand and gravel pits by typical marsh vegetation indicates the feasibility of a created wetlands component in gravel/sand reclamation planning. Using the natural pit wetlands as models and examining the pertinent literature, guidelines were developed for: (1) selecting promising sites, (2) planning with a regional perspective, and (3) construction and monitoring. Key concepts are: hydrological stability and adjacent land uses that will not have an adverse impact; consideration given to how a pit wetland will interact with adjacent ecosystems on a regional level; grading of pit perimeters to produce irregular contours and no more than a 0.6 m change of elevation within the proposed wetland; a combination of limited deliberate planting along with natural colonization whenever the reclamation permit can be adjusted to allow the 3 to 4 years commonly necessary for such colonization; the establishment of self-perpetuating marsh vegetation confirmed over a 3-year period of observation as a minimum requirement for determining permit compliance. Longer term monitoring of pits reclaimed under these guidelines could provide information that would increase and refine post-mining land-use options for wet sites. Research projects could focus on learning more about development of wetland functions within created systems, eventually providing standards for evaluation on a functional level.

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## Introduction

Wetland creation is still in its infancy as an applied science and is not yet capable of producing predictable results. It is, consequently, a subject of considerable controversy. To some it appears to be a relatively simple, repeatable process; to others a minefield of assumptions regarding ecosystem structure and function. The experimental nature of wetland-creation has made it less attractive for mine reclamation proposals, resulting in very little effort made to purposefully create gravel-pit wetlands, even where conditions are very favorable. The vast majority of wetlands and waterbodies on mined lands nationwide exist not because they were planned for, but by accident as a result of the mining of gravel for highway and other construction projects (Brooks, 1990). As examples

of natural regeneration, these sites can provide valuable information regarding the species composition, life-support functions, and long-term persistence that might be expected in future "successful" wetland creations.

Without substantial scientific evidence, which we do not have, there is no reason to assume that these volunteer wetlands function on the same level or provide the benefits of the long-established ecosystems which have been filled-in and lost to agriculture and development. It seems likely, however, that even disturbed and degraded wetland sites may have unknown value. Increasingly, studies indicate that these sites may be very significant for rare species, migratory birds, and regional hydrological functions (Josselyn and others, 1990). "Sites presumed to have little value may provide vital



refuge for species during storm events or support rare and endangered species due to lower interspecific competition within these marginal habitats" (Josselyn and others, 1990).

Scientists have now begun to study wetland creation and restoration in an effort to manage and accelerate processes which may take generations to occur naturally. From these experimental studies will come information which may ultimately allow true replacement of lost or damaged ecosystems. More research is needed, and sand/gravel pits are in many instances ideal as test sites. Excavations that expose the water table commonly create the hydrological features necessary for a wetland, and they eliminate the need for diking and high-maintenance pumping and drainage systems.

The gradual colonization of numerous abandoned wet pits by wetland species indicates both their suitability for subsequent use as a planned wetland and the potential to add to the wetland resource base. Innovative reclamation could supply valuable habitat, contribute to regional hydrological resources, and provide research opportunities to improve our understanding of artificial wetlands. Sand/gravel-pit wetlands offer benefits to society with which mining companies could be pleased to be associated and identified.

### Minimum Site Requirements

#### Hydrology

Hydrology is the key to long-term functioning of wetland ecosystems (Kusler and Kentula, 1990). Since establishment of hydrophytic vegetation will depend on both the predictability and controlled fluctuation of water levels, wetland creation should be restricted to those sites for which seasonal water-level elevations have been determined and where some manipulation is possible. Freshwater gravel-pit wetlands not in river or stream beds will be dependent on ground water and variable surface water flows.

Ground water and surface runoff do not always provide dependable water sources, but in most situations they will satisfy the requirements of a wetland project (Van Egmond and Green, 1992).

Assessing the reclamation potential of sand or gravel excavations as wetlands should involve monitoring test pits for annual water-level fluctuations. The amount of fluctuation depends on the nature of the aquifer and on how much water mining operations and nearby users consume. Ranges of 2 meters per year are not uncommon in porous sand and gravel aquifers with local recharge zones (Michalski and others, 1987). Some gravel-pit sites may not be suitable for wetland development due to extreme variations of the water table. Suitability can not be determined until the expected range of the water-table elevation has been established with statistically sound data. Since a successful wetland design incorporates many site-specific variables, it is not possible to generalize acceptable range maximums or periodicity. A decision must be based on project goals and the requirements and tolerances of the wetland-plant communities that project designers want to establish (T. S. Miller, King County Services, oral commun., 1992). The widely varying flooding tolerances among wetland species can be used to advantage in increasing wetland creation options for a particular site. A flexible plan that can accommodate unexpected changes in plant community composition will have a greater chance of success, especially where ground water flows are seasonally unstable.

#### Potential Land-Use Conflicts

Social considerations may be just as important determinants of site suitability as physical ones. "Adjacent land use . . . could detrimentally impact functioning of wetlands or the wetlands may have detrimental impacts on current or planned uses of neighboring lands" (Hammer, 1992). Intensive agriculture or heavy industry adjacent to the site might produce sediment or chemical-loaded runoff that would prevent wetland establishment.



Wetlands themselves can be unwelcome neighbors. Although some new housing developments and office complexes are planned around preserved sections of wetlands, residents of established communities may well object when wetland alternatives are proposed. Neighborhood opposition often focuses on the prospect of public use, with fears of noise, traffic, and vandalism paramount. Several mining companies have shelved plans to donate lands to the public when faced with organized community opposition (Morris, 1982).

### Planning Pit-to-Wetland Conversions

#### Pre-planning for Realistic Goals

Wetland conversion plans should be "integrated with mining operations and reclamation at the beginning of any project" (Brooks, 1990). This ideal should not preclude adding wetlands to an existing reclamation plan. Wetland creation could be added to a previously permitted proposal for a post-mining open-water pond, for instance, assuming the hydrologic conditions to support the pond had already been established. Reclamation designed around an aquatic ecosystem goal provides direction in the early planning stages, but the decision to attempt creation of specific wetland functions might best be left until mining is nearly complete. At that point the altered hydrology of the site could be re-evaluated, and objectives could be based on several seasons of hydrological data-gathering plus assessment of regional land-use trends over the same time-span. When objectives have been established, they should be clearly described and recorded, along with any subsequent amendments, because on-site modifications during construction and planting are commonly necessary (Hammer, 1992).

Michalski and others (1987) recommend detailed studies to determine surficial characteristics of the site before, during, and after extraction. If pumping of ground water is part of the extraction process, the output could be monitored to estimate in-flow rates and the potential

area of ground-water influence after mining (Michalski and others, 1987). Pre-mining planning could include provisions for hydrological monitoring and record-keeping at various stages over the life of the mine. This provides the database from which to determine the most feasible final configuration. The information would be useful for establishing other reclamation endpoints if it did not ultimately support the proposed wetland goal.

### Regional Reference Wetlands as Guidelines

The most fundamental goal, regardless of the specific chosen objectives, is to develop self-maintaining systems that mimic natural ones in as many ways as possible. The study of local natural wetlands is important because artificial wetlands must closely imitate natural systems adapted to the region if a creation project is to succeed without continual operating and maintenance costs (Hammer, 1992). This means that design parameters must be appropriate to local hydrology, climate, and soil conditions. Measurements of elements of wetland structure at a natural site within the region or watershed that shares these conditions will provide insights into what is obtainable and how to evaluate progress at the constructed site (Hammer, 1992). In the context of comparisons of natural to artificial, the objectives for a created wetland must encompass "only a very early successional stage if the evaluation period is short (less than 10 years for a marsh)" (Hammer, 1992).

### Landscape Considerations

Even if the physical parameters of a site are favorable for reclamation as wetland, the result will be counterproductive if it conflicts with regional land-use priorities or overall ecological balance. "Land managers need to establish their mitigation policies in the context of what changes are occurring in wetland types throughout a given physiographic region, not just on a particular mine site" (Brooks, 1990). Assessing these trends to determine regional need for specific wetland types requires coordination among

federal and state agencies. Cooperating agencies must then see that this information is transferred to those who will be planning wetland construction, including the mining industry (Brooks and others, 1988).

### Constructing a Gravel-pit Wetland

#### Site-specific Considerations and Grading Plans

Since each site presents a particular combination of hydrology, topography, and substrate, only generalized instructions can be provided. There are no exact guidelines yet accepted in the very young science of wetland creation. Given favorable site hydrology, however, it is possible to proceed with assurance that the creation of gentle slopes at pit perimeters plus restoration of topsoil, or even moderately amended subsoil, will result in establishment of wetland vegetation. Many abandoned wet pits have, over time, acquired typical wetland vegetational characteristics with far less encouragement.

Although many mine reclamation plans are submitted in the initial permitting process, it may not be practical to plan the specifics of a post-mining pit wetland until the extraction is nearly complete. At that point it should be possible to draw up a detailed site grading plan which will take the site variables into account. The final hydrological parameters, in particular, may not be fully anticipated or understood until the alterations that mining imposes have actually been realized. The site grading plan is an essential element in engineering the site for wetlands because it will determine basin morphometry, which in turn determines vegetational composition (Garbisch, 1986). Because many wetland plants are sensitive to water depths within a low range of tolerance, the most useful plan would have contours of 1 foot or less at a scale of 1 inch equals 20 to 50 feet (Miller, 1987).

The precision grading required to bring the site to the final grade within the established tolerances may not be possible if water cannot

be excluded from the pit (Garbisch, 1986). In these instances, "the site grading plan should reflect this . . . and specify the scattered mounding of fill materials in order to diversify the wetland habitat" (Garbisch, 1986).

### Shorelines and Slopes

A common recommendation for sand-or-gravel-mine wetland construction is to increase the area of the pit basin by creating an irregular shoreline. Bays, inlets, coves, peninsulas, and islands increase topographic heterogeneity and habitat diversity and provide more "edge" by increasing percentage of shoreline per unit area (Crawford and Rossiter, 1982). Pit floors should also have an irregular topography with mounds and depressions (Norman and Lingley, 1992; Van Egmond and Green, 1992; Michalski and others, 1987). Dumping overburden in irregularly spaced piles will create rough bottom contours and perimeter landforms (Van Egmond and Green, 1992).

Construction of some of these landforms can take place during mining to simplify post-mining reclamation. Overburden and waste materials (including boulders and tree debris) can be graded into landforms above and below the water line (Michalski and others, 1987). Islands for protection of waterfowl and general ecosystem diversity can be developed in undrained pits during operations (Michalski and others, 1987). They should be separated from the shore by a permanent water depth of 1-to-2 m and a width of 4-or-5 m, with tops at least 1 m above the estimated highwater mark (Van Egmond and Green, 1992).

Slopes for a true marsh community need to be almost flat — no more than a 0.6-m change of elevation between the deep and shallow marsh (Miller, 1987). Shallow slopes maximize flooding and minimize erosion (Kruczynski, 1990). Brooks (1990) and Crawford and Rossiter (1982) recommend gentle slopes at 10H:1V or 20H:1V; Kruczynski (1990) suggests that a range of 5H:1V to 15H:1V is acceptable. Since it is unlikely that efficient mining will be possible at

these angles, the cut-and-fill method can be used to create recommended slopes (Norman and Lingley, 1992).

Unless slopes have been left ungraded and unstabilized, gravel-pit waterbodies typically have two distinct habitats: the shoreline wetland and open water. Grading plans will determine how much area will be allotted for each. Fifty percent open water to 50% marsh or swamp is often cited as optimal for fish and wildlife habitat (Van Egmond and Green, 1992; Crawford and Rossiter, 1982). Norman and Lingley (1992) suggest 25% of the waterbody in shallow water less than 0.6 m deep, 25% in shallow water 0.6-2 m deep, and 50% in water greater than 3 m as a general guideline for use by fish and waterfowl. If wetland communities are the objective, however, "the higher percentage of shallow areas the better" (Norman and Lingley, 1992).

#### Water Level Adjustment

Gravel and sand pit-wetland creations are primarily ground water-fed and therefore may not require elaborate water-control mechanisms. According to Van Egmond and Green (1992), "natural cycles of drought and wet spells will sometimes provide adequate changes in water levels." An outlet with a controllable weir will increase management options, however, and will enable periodic partial drainage which helps re-establish wetland vegetation. Van Egmond and Green (1992) recommend that a water-level drawdown should occur every 3 to 10 years. Boule (1988) emphasizes the importance of simple systems which are more likely to be self-regulating and self-maintaining. He advocates relatively inexpensive weirs or other similar devices which are unlikely to fail and disrupt the entire system. Outlets should be identified on-site and recorded in plans so that they can be periodically inspected and protected from erosion (Norman and Lingley 1992).

Branch (1985) reported successful vegetation establishment on a 5-ha portion of an abandoned sand and gravel mine in Maryland using a

device with a removable weir plate which controlled the top 0.3 m of water in the basin. Removal of the weir plate exposed perimeter areas for planting; once this was complete, the plate was reinstalled to restore the project design water levels. Garbisch (1986) suggests that incorporation of an adjustable weir in the project design may compensate for less-than-precise grading.

Although periodic "drawdowns" are important for waterbodies that function as waterfowl habitat, many pit ponds lack surface drainage and "cannot be drawn down using standard dikes and weirs" (Michalski and others, 1987). For landlocked ponds receiving supplemental water from surface runoff, a partial drawdown can be engineered by periodically diverting this surface flow (Michalski and others, 1987). Unless there are concerns about contaminants in the surface water, it can be directed toward the pit-pond impoundments (Van Egmond and Green, 1992). The drainage channels "should have a natural sinuosity and gradient", should be stabilized with riprap or vegetation, and should be directed through upland "vegetated areas to slow runoffs and aid in water filtration" (Norman and Lingley, 1992).

#### Sealing and Lining

Since "most natural wetlands are perched above an impervious layer that reduces or prevents water loss", Hammer (1992) believes that there are few situations in which a basin can sustain a wetlands ecosystem without an impermeable lining. Brooks (1990), on the other hand, states that "basins constructed below the water table rarely need to be sealed." Wet pits have an advantage as wetland creation sites not only because they are filled primarily by ground water flow, but also because natural sealing is common. The material left behind after gravel mining usually has a fairly high percentage of clay or silt, especially if aggregate was washed on site (Bradshaw and Chadwick, 1980). These "fines" will contribute to the blocking of water movement, and over time additional fine sediments will be eroded or carried into the pit lake



with surface runoff (Evoy and Holland, 1989). The extent of this natural sealing will vary from site to site depending on the shape of the pit, bank materials, perimeter vegetation and water turbidity (Durbec and others, 1987). It seems likely, however, that even a partial lining of sediments within the pit would be beneficial from a wetland creation perspective.

## Soils

An appropriate substrate for plant establishment can be created by placing topsoil on banks, islands, and submerged areas that have the recommended shallow grade. Norman and Lingley (1992) recommend a 15-to-20 cm layer of topsoil over a thicker layer of subsoil; Hammer (1992) suggests a 40-to-60 cm total soil layer (topsoil and subsoil) will be needed to provide adequate substrate for root growth. This soil layer should be placed on islands and down to 1.5 m below the expected highwater mark for the wetland perimeter (Van Egmond and Green, 1992). If grading-plan configurations are to remain accurate, the pre-final grades will have to be made lower than the final design elevations to allow room for the topsoil (Miller, 1987).

Stripping and stockpiling of topsoil before mining will reduce reclamation costs later on. To maximize efficient use of on-site materials, clean process-waste fines can be used to augment salvaged topsoil (Hart and Keammerer, 1992). Structural damage can be minimized if soil stripping and replacement is limited to dry periods and if proper machinery (e.g., wide-track crawler bulldozers) is used in re-application (Norman and Lingley, 1992). Any sort of unnecessary equipment movement over the soil should be avoided.

There are varied estimations of appropriate topsoil storage periods. Brooks (1990) specifies a maximum of 3 months. Garbisch (1986) says stockpile duration must be less than 4 weeks. Segmental reclamation is the only procedure that will be compatible with these storage times,

because it allows transfer of topsoil directly from an active mining segment to another segment which is in the process of being reclaimed. This reclamation approach is ideal for larger sites and long-term operations, but it is not always an option where deposit heterogeneity and market fluctuations prevent continual movement of the operation from one segment to the next (Norman and Lingley, 1992). Where longer storage periods are necessary, Michalski and others (1987) suggest seeding of the piles as a way to reduce loss of quality.

For mined sites that have no salvaged topsoil available, the partially weathered subsoil may be an acceptable substitute (Michalski and others, 1987). Garbisch (1986) goes so far as to say that most clean (uncontaminated) inorganic borrow and dredged fill materials will be satisfactory substrates for wetland establishment. Hammer (1992) agrees that "most common substrates are suitable for wetland establishment" and that "wetland plants thrive in a broad range of soil types", but adds that topsoil replacement may eliminate the need for soil amendments.

If subsoil or overburden material is the only planting medium available, then a controlled time-release fertilizer that performs in saturated soils should be put into the substrate together with the transplant (Garbisch, 1986). If the planting is occurring underwater, Garbisch (1986) suggests placing the fertilizer in burlap sacks underneath the transplant. Fertilizers should never be broadcast or spread on the soil surface of wetlands (Shapiro and Associates, 1991). The cost and additional labor necessary to apply these fertilizers would seem to argue for on-site salvaging or site-to-site transfer of topsoil whenever possible.

Straw or hay mulch is another option to consider for any reclaimed site where the substrate lacks organic matter (Brooks, 1990) and could be an inexpensive adjunct or alternative to commercial fertilizer for wetland applications. Street (1982) recommends 1 kg straw mulch per square meter.

## Wetland Vegetation

For wetland creations, there are only two basic reasons for choosing managed revegetation over natural colonization: timing and species composition (Josselyn and others, 1990). Composition, especially, is a factor in many mitigation proposals. Revegetation by artificial means may be required, for example, if a specific wetland plant community is necessary to replace habitat for wildlife species that are losing habitat elsewhere. In these situations it may be advisable to salvage plants from wetland sites that are being destroyed and transfer them to a new site where their genetic diversity is likely to be preserved.

Managed revegetation programs are also generally more successful in controlling exotic species which commonly invade disturbed areas and become established first (Josselyn and others, 1990). These exotics usually have a competitive edge over native marsh species and may form extensive monotypic or low diversity stands that decrease the wildlife habitat or nutrient processing functions of the wetlands they take over. Reed canarygrass (*Phalaris arundinacea*) and purple loosestrife (*Lythrum salicaria*) are notorious local examples in freshwater wetlands.

There are also a few ubiquitous native wetland plants which may be considered undesirable due to their aggressive, weedy characteristics. Many wetland ecologists would advise control of dominants such as common cattail (*Typha latifolia*), willow (*Salix* spp.), and cottonwood (*Populus* spp.) because of their tendency to reduce system diversity and crowd out plants more valuable to wildlife (Hammer, 1992; Odum, 1988; Erwin and Best, 1985). These pioneer colonizers are adapted to invade disturbed sites, and "creation projects often behave like disturbed wetlands" (Odum, 1988). Nonetheless, dominant natives such as cattail, willows and cottonwoods remain popular components of revegetation projects and are found on many lists of suggested species for wetland plantings. As naturally occurring features on most disturbed

freshwater wetland sites, they would seem to be far preferable to weedy exotics and perhaps not worth great effort and expense to control unless their establishment would conflict with project goals.

If a natural seed source is nearby, or if the substrate contains a seedbank from another location, periodic manipulation of water levels in the constructed wetland basin can be sufficient to start germination and retard growth of terrestrial species. Miller (1987) suggests that a seed source can be obtained from mud removed from shorelines of existing ponds and marshes and spread in the shallows (water depth less than 10 cm) of the created site. Brooks (1990) mentions the possible transfer of seed-bearing hydric soils from wetlands scheduled to be altered or filled-in for development. The removal of plants or soil can be justified only when the destruction of the natural wetland is a legally sanctioned certainty and all relevant government regulations have been followed. If these conditions are met, salvaging of plants and hydric soils from nearby development sites or during segmental reclamation should be encouraged as a means of preserving what would otherwise be lost.

A post-reclamation study comparing treatments in a central Florida marshland reclaimed from a phosphate mine provides support for the use of relocated hydric soils. The study determined that topsoiling with a 2-to-10cm-thick layer of "mulch" containing seed and root material obtained from a wetland borrow site showed "distinct advantages over natural revegetation of overburden" (Erwin and Best, 1985). After two full growing seasons, the mulched areas had higher species diversity and more complete vegetative cover than the untreated overburden areas. More importantly, this topsoiling method "appears to encourage the accelerated establishment of late successional plants in sufficient quantities to compete with aggressive weedy species" (Erwin and Best, 1985).

Natural hydric soil seedbanks thus obtained should not be stockpiled for longer than 1 month to avoid desiccation and possible re-oxidation of



metals (Brooks, 1990). Hammer (1992) advises that any wetlands soil reserved for later use should be stored underwater to prevent release of bound metals.

If a legally and ecologically acceptable donor site is available, Hammer (1992) recommends an alternative to digging out and spreading a layer of wetland soils. This method involves collecting cores of wetland soil (10-12 cm diameter and 15-25 cm long) and inserting them in the substrate at the reclamation site. The cores contain seeds as well as roots, tubers and rhizomes and can rapidly develop into a complex wetland community. They are also a reservoir of propagules that may produce additional plant growth for several years after they are installed at the new site. Disadvantages center around labor costs involved in collecting, transporting, and installing the cumbersome and somewhat fragile cores.

If species composition for a particular mitigation purpose is not a concern, and if establishment within a limited time frame and budget is the priority, then a combination of natural colonization and deliberate planting may be the most effective way to establish vegetation on gravel-pit wetlands. Natural regeneration, while not "manageable" enough for situations where precise control over outcome is important (Garbisch, 1986), may provide the best long-term results because the plants will grow where they are best adapted (Clewell and Lea, 1990). The availability of natural seed sources adjacent to the project site or the possibility of seed transport into the site via flood waters needs to be evaluated if natural revegetation is part of the reclamation plan (Clewell and Lea, 1990). The amount of hand planting undertaken should depend on the proximity or reliability of a seed source, labor and materials costs, and time allotted to complete the project.

For those pit wetlands that can or must be hand planted, the best guide for species selection will be found in the vegetative composition of similar nearby wetlands (Hammer, 1992). Local native-plant nurseries, a few of which specialize in wetland vegetation, are sources of advice on

what species combinations will produce the most natural plant communities. The objectives of the reclamation plan, which might include wildlife habitat, aesthetic enhancement, and/or storm-water detention and purification, will also help determine appropriate plant species (McMullen, 1988). The limiting factors, however, will be the physical conditions at the site and the environmental tolerances of available nursery stock.

The type of plant stock chosen will influence timing of planting and vice versa. Spring is usually the best time to plant, with fall the next best choice (McMullen, 1988). Propagules planted in late spring may be less susceptible to wildlife damage due to the shorter time to be expected between planting and germination. These timing recommendations generally apply to the seeds, rhizomes, corms, and tubers of herbaceous species, as well as to the whole plants. Woody vegetation such as trees and shrubs should be planted in the dormant state which generally extends from November through March in the Pacific Northwest (Norman and Lingley, 1992).

A biologist familiar with local wetlands should review the proposed planting design. "The number of each plant species to be used will be based on the type of community, the plant's position in the community, and the required spacing between plants" (Miller, 1987). Miller (1987) generally recommends that trees planted on 4.6-to-7.6-m centers, shrubs on 0.9-to-2.4-m centers and groundcovers on 1.0-m centers would be appropriate for the emergent shorelines of created freshwater wetlands. Marshes created in standing water deeper than 10 cm are most easily established using sprigs (culms), tubers, or rhizomes (Miller, 1987). These propagules are pushed into the mud/mulch substrate on 0.3-to-1.5-meter centers (Brooks, 1990). Plantings should be irregularly spaced in clumps to mimic natural spacing as closely as possible.

The cost of managed revegetation with nursery stock and labor intensive hand planting can be substantial (Brooks and others, 1988). Miller (1987) estimates that approximately 27,000



transplants per hectare will be necessary to establish a created marsh wetland. Costs can be greatly reduced if time expectations and reclamation objectives allow at least partial natural colonization. If the hydrological aspects of a site are favorable to begin with, precise grading and substrate preparation should be enough to assure emergence of at least a few native and/or naturalized wetland species. On sites being created as a diversity-enhancing feature of a mine reclamation plan and not as mitigations for specific wetland losses, this may be all that is needed.

Buffer areas consisting of native upland vegetation and at least 30 meters wide will increase habitat diversity and protect the shoreline and should be planted/seeded on the higher ground surrounding the pit impoundment and created perimeter wetland (Norman and Lingley, 1992). According to Munro (1991), vegetated areas should be provided as buffers between wetlands and adjacent developed land or as transition zones between wetlands and adjacent natural areas even if not required by regulations.

### Post-construction Monitoring

#### Evaluating Success

The construction process, if carefully planned and well executed, should produce a site on which the altered hydrologic conditions favor wetland development. The introduction of wetland plant species, whether by natural colonization or managed revegetation, is only the first step in that development. Wetland functions for which the project was designed might not develop for decades, if at all. According to Hammer (1992), it is "grossly unrealistic to expect to create even the simplest type of natural wetlands systems" within 2 or 3 years after construction. This makes it very difficult for regulators to determine whether a wetland reclamation has been "successful", particularly if the site is part of a mitigation effort to replace the functions of natural wetlands sacrificed to development.

The time limits for completion of revegetation that are specified by many surface-mine regulatory programs are inadequate for the evaluation of created wetlands. Washington State allows 2 years or "such later date as may be authorized by the department" (Chapter 332-18-050 WAC). The literature on wetland creation and restoration indicates that 2 years is not sufficient time for stabilization of new emergent marsh ecosystems. Boule (1988) suggests that establishment and natural perpetuation of plants in marsh and shrub-swamp systems would require 3 to 5 years. Brooks (1990) states that "there is some scientific evidence for the stabilization of emergent marsh systems after three years." Josselyn and others (1990) report their observations that many San Francisco Bay area wetland restoration projects which had been considered revegetation failures became fully vegetated when allowed a 3-to-4-year period of natural regeneration.

Past experience with restored or created wetlands also indicates that revegetation over 1 or 2 years is "no guarantee that the area will continue to function over time" (Kusler and Kentula, 1990). Active monitoring, with periodic review by qualified personnel, would provide some perspective on the direction that site development is following and would allow for timely mid-course corrections if necessary. Reports, submitted within 90 days following sampling, should document any vegetation changes including percent survival and cover of planted and/or volunteer species (Erwin, 1990). Monitoring reports should also document issues related to water levels, water quality, and sedimentation and discuss recommendations for improving the degree of success observed (Erwin, 1990).

#### Short-term vs. Long-term Monitoring

The evidence regarding the establishment of marsh vegetation seems to indicate a minimum 3-year monitoring program for wetland creation projects. Brooks (1990) suggests that expenses for a 3-year monitoring period be included in the cost projections for any mine reclamation plan



with a wetlands component. This allows for assessing of varying conditions over three growing seasons and should not result in unbearable economic burdens on the permittee (Brooks, 1990). Boule (1988) feels that annual monitoring of wetland creations over a 3-year period is the minimum acceptable term; 5 years would be more appropriate for some complex projects. Erwin (1990) agrees that post-construction monitoring should be conducted over a 5-year period, with a minimum of 3 years, and with annual inspections at the end of each wet season.

The short-term monitoring proposed here will not be sufficient for scientific research and data collection, and it will not help redirect evaluations toward establishment of wetland functions rather than appearance. Success in a 3-year time-frame may have to be measured in terms of survival and growth of plant species characteristic of a wetland community with no consideration of functional attributes.

Long-term research projects that will enhance our ability to predict the outcomes of mitigation policy should be encouraged and carried out whenever possible. These projects can focus on learning more about development of wetland functions within created systems and may eventually provide standards for evaluating function. Until such standards exist, personnel responsible for judging compliance with permit requirements will have to rely on the tools at hand. For wetlands created outside a mitigation context the establishment of self-perpetuating marsh vegetation, confirmed over a 3-year period of observation, seems a realistic and appropriately flexible reclamation objective.

### Correcting Problems

In addition to verifying compliance with reclamation plan requirements, monitoring programs can also identify problems which might eventually lead to failure. Miller (1987)

and Garbisch (1986) list several reasons for poor results at some wetland creation projects: improper final grade, invasion or deliberate planting of nonnative plant species, poor planting techniques, inadequate water levels, vandalism, and wildlife predation. Mid-course corrections can often mitigate these problems before the project becomes a lost cause, but corrective measures are best determined by professionals qualified in fields such as wetland science or restoration ecology.

Some created wetlands need long-term management to survive and function as they were intended. This "may include water level manipulation, control of exotics, controlled burns, predator control, and periodic sediment removal" (Kusler and Kentula, 1990). Management of this type beyond a 3-to-5-year program coordinated with annual monitoring is probably not feasible for most reclaimed pit sites. Once the mine operator is released from further obligations under the reclamation permit, the site will have to be self-sustaining. This means that problems that are not correctable within the proposed 3-year monitoring period will continue to have a detrimental influence, perhaps a regional one.

This further emphasizes the importance of site-specific project designs developed from data gathered both before and during the mining operation. Although each site is an experiment within which complete control is never possible, development of a practical, self-sustaining design that uses knowledge of site characteristics is the best defense against the unexpected. Larson (1988) suggests that minimum data requirements for freshwater wetland creation projects include a baseline of information on land-use history, macrotopography, general surficial geology, streamflow, lake hydraulics, and ground water levels and quality. Hart and Keammerer (1992) stress the importance of accurate historical project records documenting the techniques used, including a detailed photographic record. "This information is of paramount importance relative to understanding successes or failures" (Hart and Keammerer, 1992).

## Conclusions

The sand and gravel industry, increasingly under public scrutiny as its operations are encroached upon by suburban development, must now focus on the long-term regional implications of post-mining land-use decisions. It has been proven that worked-out pits lend themselves to a wide range of subsequent uses, but the majority of these uses have come about by accident rather than intent through planning. The natural regeneration that has occurred at many abandoned wet-pit sites indicates tremendous potential for increasing the nation's freshwater aquatic ecosystem resources, but this potential is not being fully used. Wetlands, in particular, have been neglected or overlooked in sand-and-gravel-mine reclamation planning.

Opportunities to balance use of an essential non-renewable resource with development of new resources may in time prove more valuable than the materials which have been extracted. Wetlands are in short supply and increasingly threatened. While creations are not a substitute for mature natural systems, they have the potential to initiate functional wetlands for future generations. For the immediate future, they can add to regional ecosystem diversity and provide habitat for many species of plants and animals. The hydrology of worked-out sand and gravel pits is typically ideal for wetland creation projects. What is needed is industry commitment, cooperation among government agencies, and support from an informed public.

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# **Nancy Street Wetland Enhancement: Assessment of Design and Construction**

Prepared by the City and Borough of Juneau  
Engineering Department  
2006

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## I. Introduction and Site Description

The Nancy Street Reclamation Project pioneers a creative strategy to partner development needs of a fill disposal site with conservation needs of wetland habitat and water quality enhancement. Six acres of wetlands along an impaired anadromous salmon stream became the site of fill disposal for a high school construction project in the Mendenhall Valley in Juneau, Alaska. The filling was designed to provide a platform for wetland emergent plantings and a meandering stream with riffles and deep water pools for juvenile salmon. For the City and Borough of Juneau (CBJ), the purchase of this parcel from a private landowner meant \$137,000 dollars to provide a disposal site only one mile from the construction site. Otherwise, the transport of the fill would require a three mile drive to Lemon Creek. The CBJ Engineering Department charged the contractor a lower rate for fill disposal and used this revenue to partially recover the cost of the land purchase (Appendix 3).

From the conservation perspective, this strategy met goals of a ten year old community watershed plan and the Juneau Wetland Management Plan to improve the habitat and water quality of the Nancy Street Wetland. In the 1950s and 1960s, the land was dredged to extract gravel deposits. The pit filled with groundwater that was high in iron and low in dissolved oxygen. The water from this system enters the Duck Creek system and ultimately flows into the valuable Mendenhall Wetlands. By filling to create an emergent wetland, the plants act as water filters and improve salmon and bird habitat.

The integration of a community participation component to the project raised support and enthusiasm for the creation of the wetland. Local volunteers planted willow and cottonwood in the wetland and various community groups donated time and money to the revegetation and the construction of a trail. Since the construction of the trail, nearby property owners have expressed approval and gratitude for the wetland reclamation.

This document summarizes the planning, design, and construction of the Nancy Street Wetland Reclamation Project. The site description presents the history and ecological problems found in the former gravel pit. Then the design and process of filling, revegetation and trail creation is discussed. Finally, a plan for monitoring and maintenance is proposed in order to measure the functionality and the success of the design and construction. Future plans to fill the Allison Pond as a wetland depend on the economic and ecological success of the reclamation as well as the public perception of the project. This document provides a guide to measure this success.

### *Site Description*

The Nancy Street Wetland is located in the East Mendenhall Valley along Duck Creek, ten miles south of downtown Juneau. As part of a glacial valley, the land has been in flux for centuries, the most prominent example of this being glacial rebound. Only in the past century have people been continuously inhabiting this land. Juneau, as a gold rush town, formed in the late 19th century around two mines located near the downtown area. Prior to the arrival of the gold miners in Juneau, the Tlingit people had established a summer village a few miles north of the Mendenhall Valley. It is believed that the Tlingit only visited the valley occasionally. In 1885, the first record of land use in the valley identifies Daniel Foster as a homesteader. He raised animals and farmed the land at the mouth of the valley (Koski and Lorenz, 1999).

In the next 40 years, development of the valley occurred rapidly. A road was built to access a hydroelectric plant constructed near the glacier. Fox and mink farms, common in this part of Alaska in the 1920s, occupied much of the flat valley land. Salmon harvested from Duck Creek fed the animals. In the mid-1900s the Juneau airport was constructed on the land where Duck Creek flowed into the ocean. The creek was diverted to empty into the Mendenhall River. Along the creek bed, gravel pits were dug and homes, schools, and commercial areas were developed (Koski and Lorenz, 1999).

In the 1950s and 1960s the current Nancy Street wetland including land to the north and south of the site were dug for gravel extraction to support the rapid development of the city. After the mining was completed, the holes were left to fill with water. The pond then supported a stump dump and the neighborhood dumping of yard waste and many other household items. A private owner of the Nancy Street site sold the land to the City and Borough of Juneau to be used as a fill disposal site and reclaimed wetland. The northern portion of the site is still owned by the Church of the Nazarene

Photo from Koski and Lorenz, 1999.  
Duck Creek, early 1900s





who has agreed to allow city access to the wetland for the reclamation project. From this early industrial history of the landscape, the only visible remnants are piles of gravel mining waste along the southern end of the Nancy Street Pond.

Currently, the Nancy Street Wetland is surrounded by dense suburban development with supporting infrastructure such as roads, schools, churches, and a commercial center. According to a study done by the Department of Parks and Recreation



Photo taken by Michele Elfers.

Nancy Street Pond 2005, prior to reclamation, Thunder Mountain is seen on the right

in Juneau, 11,000 people live in the East Mendenhall Valley with a higher than average density of 5 to 18 residential units per acre (1996). Immediately surrounding the Nancy Street Wetland is a church to the north, single family home developments to the east and south, and the collector road through the valley to the west that separates the wetland from a mobile home community. The dense development limits access to off street recreation for residents. It is difficult to move through this part of the valley without crossing streets or private property.

The Nancy Street Wetland site is seven acres of wetlands and uplands located on the East Fork of Duck Creek in the Mendenhall Valley in Juneau, Alaska. The East Fork drains 266 acres of land into the mainstem of Duck Creek. The entire Duck Creek Watershed drains 1.7 square miles of land into the Mendenhall River just upstream of the largest tidal wetland in Southeast Alaska. As part of this larger system, the water quality and habitat resources of this stream are vitally important to the ecosystem of Southeast Alaska. The Duck Creek Watershed has been recognized for its valuable habitat for salmon and its poor water quality. It is classified by the state as anadromous fish waters (Alaska Department of Fish and Game Catalog No. 111-50- 10500-2002) for its run of coho salmon. It is also designated an impaired water body by the Alaska 303(d) list of Impaired Waters, Alaska Department of Environmental Conservation. These two factors have motivated the city of Juneau and federal agencies to focus on the improvement of the stream system.

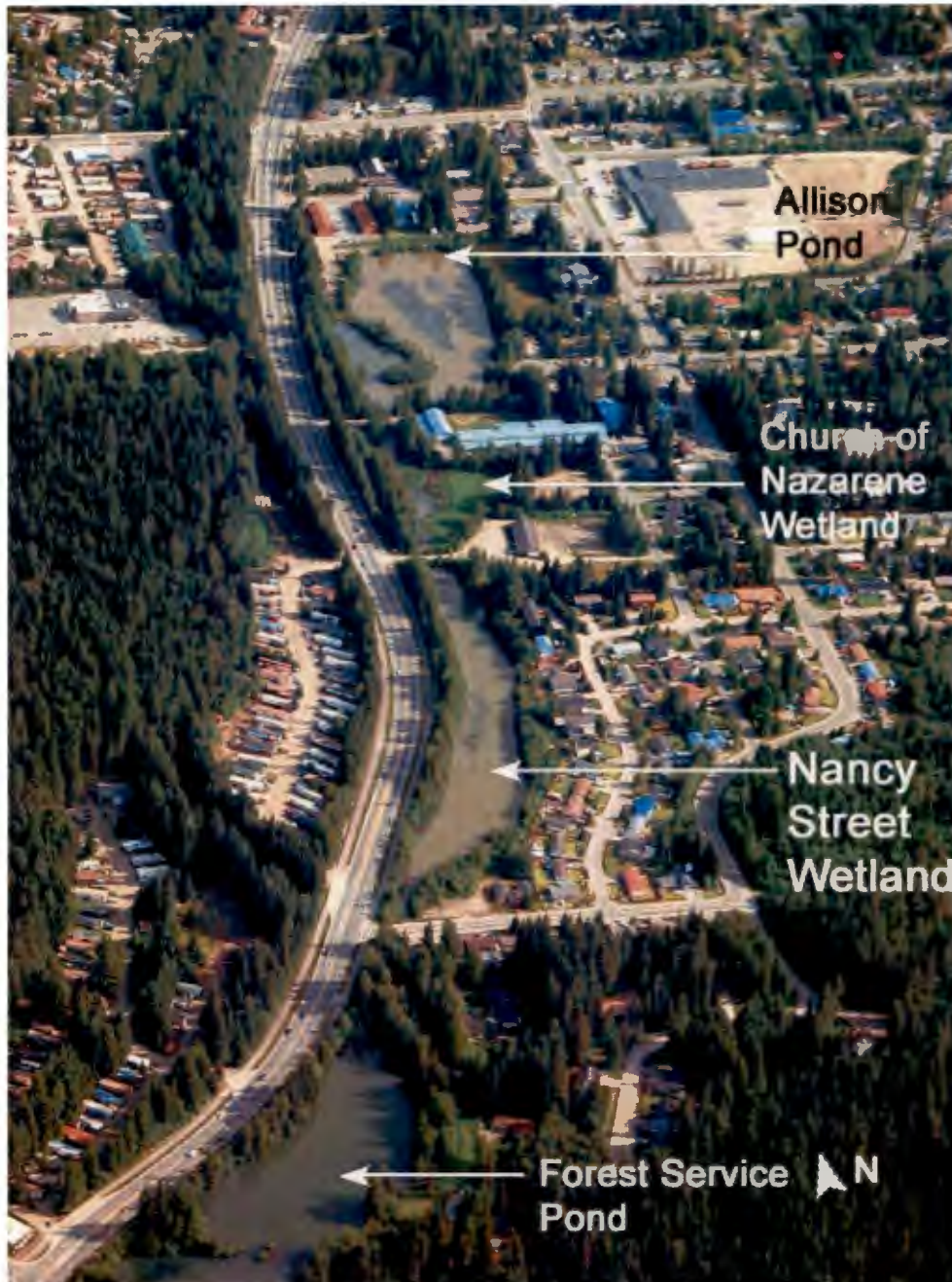


Photo from Koski and Lorenz, 1999.

The East Fork of Duck Creek flows through a chain of ponds and wetlands that were once gravel mines. Currently dense development crowds the ponds and wetlands into a narrow corridor along the main commuter road through the Mendenhall Valley.



Throughout its 250 year history as a watershed, the topography, stream flow and vegetation have massively changed due to glacial rebound, glacial succession and human influence. In its current state, the densely populated residential areas surrounding the wetland contribute to problems of turbidity, heavy metals, iron floc, fecal coliform and low dissolved oxygen rates within the watershed (Koski and Lorenz, 1999). However, many of the current water quality problems result from the geologic and cultural history within the Mendenhall Valley.

The known geologic history began during the Pleistocene Era 18,000 years ago. Metamorphosed igneous and sedimentary rock composed the Mesozoic bedrock under what is now the Mendenhall Valley. Glaciers advanced and covered the land with 4000-5000 feet of ice. When the glacier retreated, it carved out the depression that is now called the Mendenhall Valley. The glacial moraine deposited marine sediments, sand, gravel and organic materials in the valley. The most recent glacial advance in this valley began 700 years ago during the Wisconsin Age. The glacier advanced until 1750, and covered at least half of the current Duck Creek watershed. As the glacier retreated, Duck Creek gushed from the face and created an outwash plain as it flowed to the ocean. Several terminal moraines were deposited throughout the current watershed. As the glacier continued to melt, however, it formed a basin and a lake. The melt water from the glacier filled what is now Mendenhall Lake and spilled out into the Mendenhall River, cutting off the flow to Duck Creek. Today, groundwater is the primary source of the Duck Creek stream flow.

Since the retreat of the glacier, isostatic rebound has significantly impacted the landscape. In 1965, Hicks and Shofnos reported the rates of .05 feet/year uplift of land between 1936 and 1962. They believed the deglaciation of the land caused this uplift. The water table lowered relative to the surface of the land as a result of this process. Currently, low stream flow levels pose problems for fish habitat in Duck Creek. There is speculation that the isostatic rebound may contribute to this problem (Host and Neal, 2004).

In addition to isostatic rebound, the highly permeable soils in this area contribute to low flow. The soils characteristics of this flat landscape are common to alluvial plains and stream valleys: well to excessively well draining. The USDA, Soil Conservation Service, surveyed the soils in 1974 in the Juneau area and found along Duck Creek primarily soils in the He and Be series.

The He series of soils are composed of silty and sandy sediments that are generally waterlaid. For this reason, the soil is stratified. The stratification is generally 40 inches to 6 feet deep and is composed of silt, very fine sand, fine sand, deposits of organic matter, and coarse sand and pebbles. The depth to water table is usually greater than 4 feet, but can be less at times. HeA is the specific soil type in this series found along Duck Creek; this signifies slopes of 0 to 3 percent and a texture of Fine Sandy Loam.

The second series found in the Duck Creek watershed, the Be series, is also common on alluvial plains and terraces as well as hilly moraine landscapes. The gravelly sandy soils indicate an excessively well drained substrate. The first layer of the soil is very gravelly sand. The material 10 inches below the surface is 50 to 75 percent gravel and cobblestone by volume. Some large stones and boulders will be present. The water table, like the He series, is greater than 4 feet, but in some areas may be close to the surface. Flooding is rare in these soils; however, close to streams flooding may occur (Schoephorster and Furbush, 1974). Field testing close to the Nancy Street Wetland revealed a layer of approximately twenty inches of fine silt underlain by five feet of sand (Beilharz, 1998). This type of soil is highly permeable and contributes to the loss of stream flow to groundwater. In some reaches of Duck Creek, the stream goes dry or becomes puddles of standing water. Low flow destroys aquatic habitat and prevents aquatic life from moving through the stream.

The geologic conditions that create low flow in Duck Creek are compounded by the suburban land use within the watershed. The upper reaches of the stream flow through residential neighborhoods of primarily single family houses, while the lower sections abut commercial centers and the Juneau airport. According to studies done in the 1980s and 1990s, residential land use covers 540 acres of the watershed, commercial/industrial uses cover 282 acres, transportation 83 acres, and recreation/wetland cover 175 acres (TMDL, 2000). In 1969, the watershed was mapped to be 3.42 square miles. In 1988, it was estimated at 1.7 square miles. Riparian buffers and wetland areas have decreased as a result of the development (Koski and Lorenz, 1999). There is speculation that the moving of stream segments as a result of development may have moved the stream onto more permeable substrates. Stream flow is lost to groundwater when this occurs.

The water quality problems of turbidity, heavy metals, fecal coliform and low dissolved oxygen rates within the watershed in Duck Creek are largely caused by the suburbanization of the valley. Approximately 36 percent of the land cover is impervious surface and in 1997, there were a total of 39 road crossings over the creek. Stormwater runoff from the

impervious surface carries sediment, metals, oils and fluids from vehicles, and de-icing agents into the creek (Koski and Lorenz, 1999).

Within the Nancy Street Wetland, one of the most detrimental results of the gravel extraction is the increase in groundwater that is high in iron content seeping into the Nancy Street Pond and the other ponds along Duck Creek. Iron is commonly found in glacial outwash plains. While underground, it remains in a soluble form of Fe(II) because of the lack of oxygen in groundwater. When groundwater carries the iron to the surface, iron oxidizing bacteria are believed to oxidize the iron and create Fe(III). This oxidized form of iron is insoluble and settles on the ground surface as orange sediment known as iron floc (Megonigal, 2001). The process of conversion of Fe(II) to Fe(III) is detrimental to the Nancy Street Wetland because it robs the water of dissolved oxygen. Fish, macro invertebrates, and other animals require high levels of dissolved oxygen for survival. Additionally, the iron floc is small sediment that clogs interstitial spaces between gravel on the floor of the stream and prevents salmon eggs from accessing the oxygen and water flow they need to develop.

Wetland vegetation promotes the conversion of Fe(II) to Fe(III) and retains the iron floc in the roots of the plants. The roots of wetland plants leak oxygen into the soil. This zone surrounding the roots that contains oxygen is called the rhizosphere. Within the rhizosphere, Fe(II) is converted to Fe(III) by oxidizing bacteria. The Fe(III) precipitates to form a solid that sticks to the plant roots, called iron plaque (Megonigal, 2001). This characteristic of wetland plants creates the iron sink in the Church of Nazarene wetland. However, there may be some problems with this strategy in the long term. Wetland plants have been found to have high root turnover rates. Root turnover is the dying off of root hairs as part of a regular cycle of plant nutrient cycling and growth. Wetland plants are estimated to have 55% of their fine roots turnover annually (Gill and Jackson, 2000). If these roots are dislodged and carried downstream, the iron plaque may also be carried downstream, thereby negating the effects of the iron sink. Additionally, iron is known to diminish the uptake by plants of other metals or organic compounds. The iron plaque covers the root hairs, reduces oxygen in the rhizosphere, and minimizes the ability of microbes to interact with chemicals excreted by root hairs. This prevents the roots from uptaking other metals or organic compounds and reduces the phytoremediative effect of wetlands. The presence of iron could negate any other degradation of pollutants (Lanza lecture, 2005).



Historically, the Duck Creek Watershed was a rich habitat for coho, chum, and pink salmon. In its current state it provides limited habitat for coho spawning and overwintering as well as some habitat for birds and waterfowl (Koski and Lorenz, 1999). The Alaska Biological Monitoring and Water Quality Assessment Program Report rated Duck Creek the lowest of all streams studied in Southeast Alaska for habitat variables in 2003. The study measured dissolved oxygen, Ph, conductivity, temperature, taxa richness and stream structure characteristics. The mean habitat assessment value for urban streams was 157 and Duck Creek scored 96. Poor quality habitat resulting from an urban watershed with high erosion and low canopy cover combined with the geologic history have degraded habitat for the fish that once used the stream system.



Iron seepage in the Nancy Street Pond

The iron itself does not seem to harm fish and wildlife. However, the conversion process of Fe(II) to Fe(III) removes dissolved oxygen from the water. The photo is taken at Nancy Street Pond in July 2005.



Photos taken by Michele Elfers.

## II. Design and Layout of Earthwork

The impetus for this partnership formed around the need for a waste disposal site for material extracted from the Mendenhall Valley high school construction project at Dimond Park. The initial design completed by Toner-Nordling Associates estimated the placement of 52,000 cubic yards of silty fill in the Nancy Street Pond. The proximity of the Nancy Street disposal site to Dimond Park ensured that this would be a cost effective fill site.

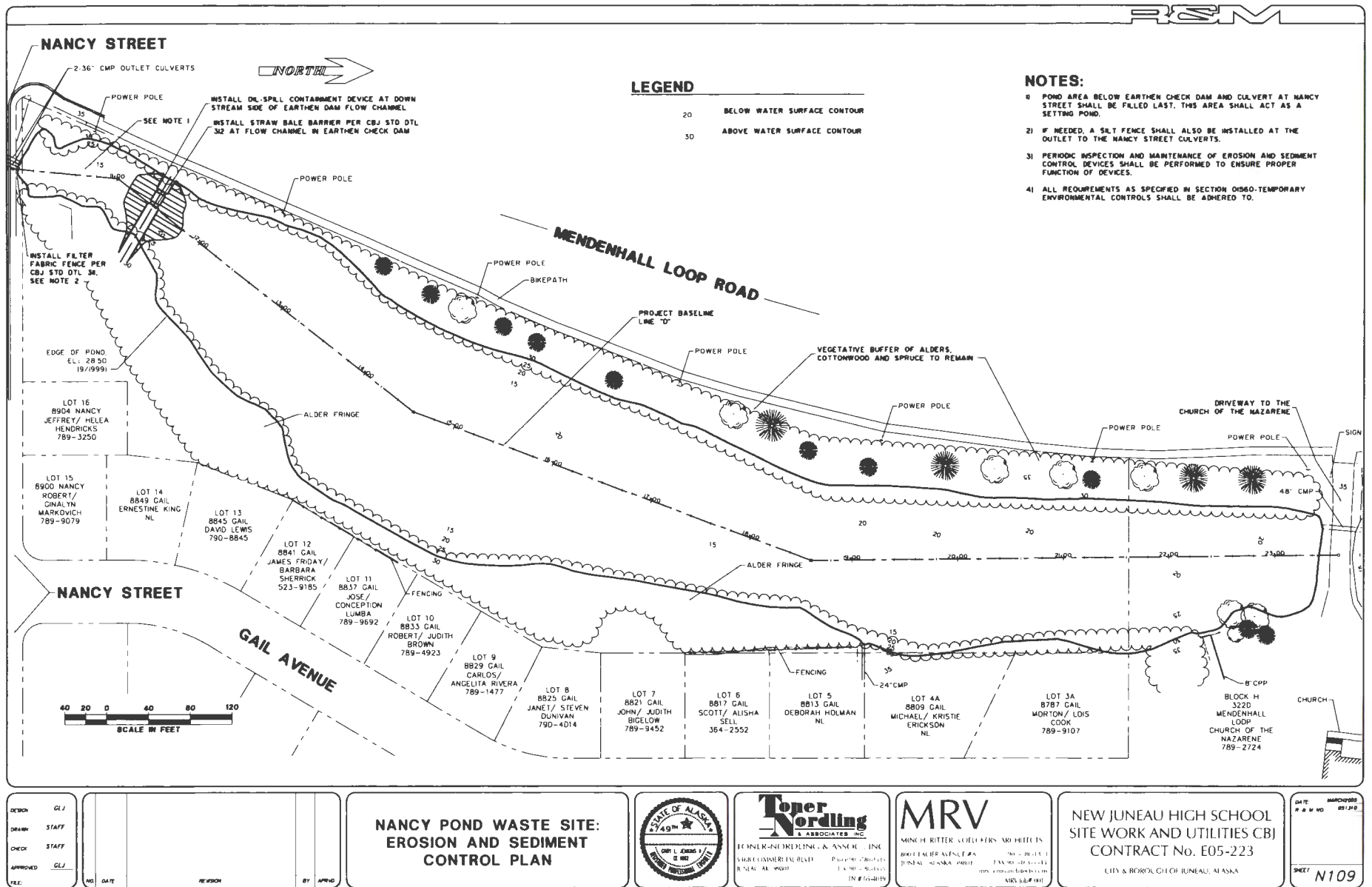
In 2004, Toner-Nordling worked with CBJ and the U.S. Fish & Wildlife Service to design the fill placement to achieve hydrologic, habitat and operational needs (See Figure 1 and 2). As part of a long-term plan to convert the upstream Allison Pond to a wetland through a similar filling process, this pond and the Church of the Nazarene water levels were designed to be controlled by an earthen dam at the southern end of the Nancy Street Wetland. The design of the Nancy Street fill and dam elevations were critical to the success of these three waterbodies. Additionally, the fill design determined habitat diversity. Low marsh and high marsh areas supported wetland emergent plants, deep water holes and the stream channel allowed for water flow and fish habitat, and the edge of the marsh maintained upland habitat. The need for efficient hauling of material required a haul road along the edge of the wetland and protruding fingers that would allow trucks access to the middle of the wetland to dump material. These access fingers became the low and high marsh habitat zones. The filling elevations below water surface elevation will be discussed in Chapter IV, Design and Layout of Vegetation.

In 2005, the design was revised by CBJ Engineering staff to enhance habitat and maximize fill placement (See Figure 3-7). As a former mining site, the extraction of gravel resulted in steep slopes at the edges of the pit. By modifying the design to increase the fill at the edges of the wetland, the slopes would be reduced to improve habitat and safety, as well as provide economic benefit through the disposal of fill. The modification reduced slopes on average from 30 to 60 percent to 7 to 15 percent throughout most of the wetland. Steep slopes were maintained where the stream channel curves at the edge of the pond to allow for overhanging vegetation that provides thermal protection for the water. The revegetation section discusses the variety of plant communities that are able to grow on the moderate slopes. The increase in fill along the slopes provided incentive for the expansion of the coho overwintering ponds by reducing the amount of fill added to these areas. The larger deep water areas benefit the juvenile coho salmon as well as providing more open water habitat for macro invertebrates.



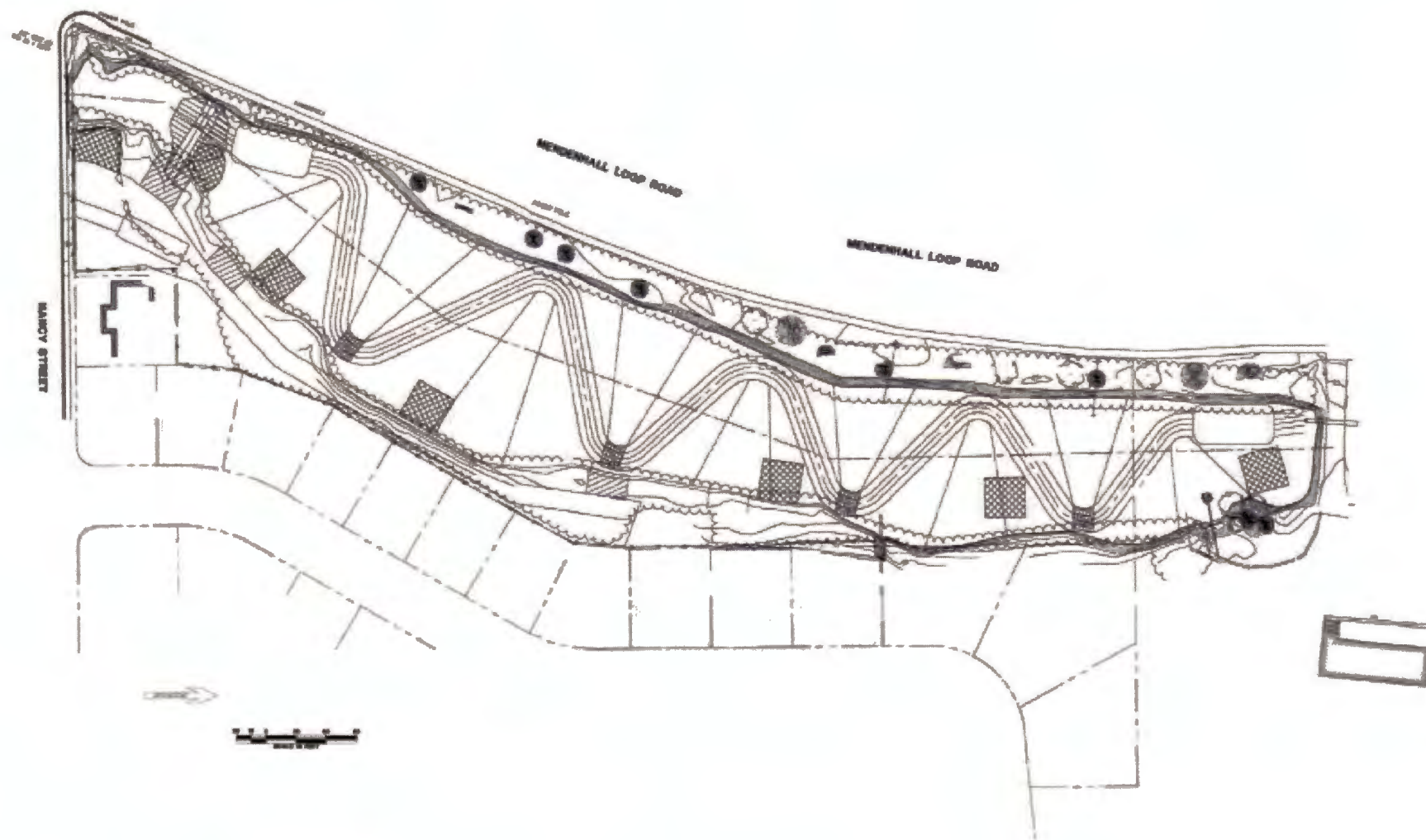
To maintain the necessary water levels and provide a diversity of habitat, the U.S. Fish & Wildlife Service worked with R&M Engineering to design an earthen dam and outlet channel. The design of the dam called for an impermeable liner to wrap around the upstream side of the dam and fold back. The outlet stream design also included this liner to prevent water loss in the stream channel. The channel included a meander and two riffle sections for aeration. A combination of cobbles and gravel for spawning formed the streambed.

As an urban wetland, the heavy construction at the site required public meetings and compromises with adjacent property owners. The Church of Nazarene owns the northern portion of the wetland as well as the driveway needed to access the haul road (See Figure 1). To gain access to the wetland for filling, CBJ paved the Church's driveway and constructed the extension of their parking lot after construction along the northeast edge of the wetland. The property owners along the east edge of the wetland requested that the tree buffer be preserved along the Mendenhall Loop Road. For this reason, the haul road was built on the east edge of the wetland.



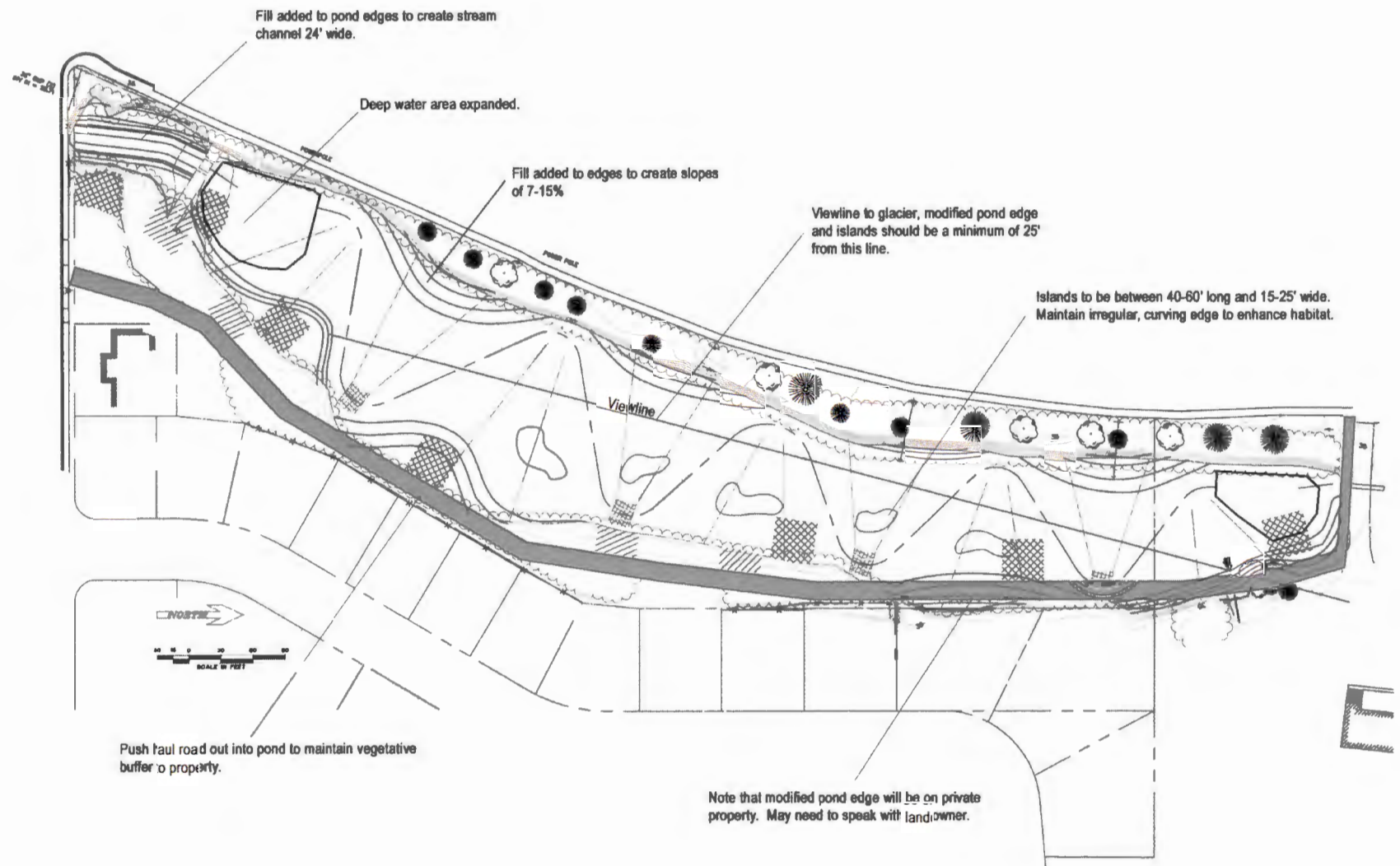
**Figure 1.** Existing Conditions for the Nancy Street Wetland

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

In the summer of 2005, changes to the grading plan were proposed by CBJ to improve habitat by reducing the grade of the edges of the wetland. In anticipation of developing a trail plan, the islands were moved to allow for a view of the glacier.



**Figure 4.** Cross Section of the Coho Salmon Overwintering Pond

Fill is added to modify the steep wetland edge and cut is removed to allow the truck hauling road for the construction phase.



**Figure 5.** Cross Section of the Stream Channel, Marsh, and Island

Fill is added to create wetland emergent plant zones. The upland island will create protected bird nesting habitat.





**Figure 6.** Cross Section of the High marsh, Low Marsh, and Stream Channel



**Figure 7.** Cross Section of the Outlet Stream Channel  
Fill and gravel is added to create a stream channel with salmon spawning habitat.



### III. Earthmoving Process and Commentary

Based upon discussions among Glacier State, R&M Engineering, CBJ, and the U.S. Fish & Wildlife Service, the process of filling was undertaken by shaping the fingers around the stream channel without filling in the stream channel or coho overwintering ponds. The alternative, to fill the entire pond and then dig out the stream channel and deep ponds would result in much less habitat diversity and variety in landform.

Glacier State began hauling and placing fill in September, 2005 and placed 64,000 cubic yards of fill by May. Ten cubic yard capacity dump trucks were used requiring approximately 6400 trips. One excavator operator worked filling and spreading the material. The material excavated from the highschool site varied from silty, to rocky mineral soil, to sandy depending on the area of excavation. At the Nancy Street pond, the excavator operator completed the filling by section, working and finishing one finger at a time. For this reason, the type of fill varies by section. After the completion of each finger, a 6-8" lift of topsoil was added for re-vegetation purposes. The unscreened topsoil came from Stabler's Quarry and was delivered at no cost to the project as part of an EPA mitigation penalty to a local company. The topsoil quality was low in organic content and high in cobble rock and woody debris content.

At the time of filling, the dam was not constructed. The fingers were filled to approximately 1-4 inches above the summer water level. The heavy rainfall received during the summer helped to compact the fingers. Usually within two weeks of shaping a finger, it would compact and solidify enough to walk easily on it. In many areas, the rocky silty fill would compact with the rains, dry out and harden to a cement like substance.

The dam and outlet channel construction began in early July, 2006 and required approximately 1-2 weeks of work. Fill was placed through the entire area where the stream channel would be located except for a narrow channel along the west edge of the wetland. This channel maintained water flow from the wetland to the culverts. After filling the area, the stream channel was excavated according to survey markers placed by Toner-Nordling Associates. The liner was secured in place under the streambed and the cobbles placed on top of it. The dam was shaped with fill, but the liner was never folded across the upstream face of the dam. It was determined by the Glacier State Contracting, R&M Engineering, CBJ, and the U.S. Fish & Wildlife Service that the fill was stable enough to maintain its integrity. The water flow in the wetland is minimal and so erosion is not a concern.

After completion of the initial dam and outlet structures, the area was given two weeks to rest. After this period, it was observed that the liner in the stream channel was surfacing due to upwelling of air and water from the substrate. Also, the established dam elevation was determined to be high relative to the elevations of the fingers. This resulted in high water levels in the wetland emergent area which could affect plant growth.

Glacier State Contracting went back into the wetland, lowered the dam level by removing fill from under the liner, re-layed the liner, added more cobbles and gravel to settle it, and reworked the stream channel meandering form. After this second effort, the liner is less visible and the effect is much more aesthetically pleasing. Due to high precipitation levels, it is unknown if the lowering of the dam will result in lowered water surface elevation.

Early stages of filling in November, 2005.  
Logs are used to support machinery as the  
fill the fingers.

Photo taken by Neil Stichert.



Early stages of filling in November, 2005. Photo looks south at the filling of the fingers.  
Photo taken by Alan Steffert.



Photos taken in April, 2006 by Michele Elfers.

Hay bales and silt fence used to control sediment at downstream end of wetland.



In May, 2006 the channel sinuosity begins to take shape.

Photos taken by Michele Elfers.







Digging of outlet stream channel, laying of impermeable fabric and initial stream shaping in July 2006.



Glacier State returned to the outlet channel and dam 2 weeks after initial construction and added more cobble, lowered the dam elevation, and reshaped the channel.

Photos taken by Michele Elfers.

#### IV. Design and Layout of Vegetation

To plan for the process of revegetation, native plant communities that will thrive in the conditions at the Nancy Street Wetland must be understood. There is little to no documentation or literature on the revegetation of wetland reclamation projects in Southeast Alaska. Interviews and qualitative evaluations of three constructed wetlands during the summer of 2005 form the foundation for the planning of the revegetation process. The Church of the Nazarene Wetland, the Floyd Dryden Middle School Wetland, and Kingfisher Pond are studied to understand the successes and failures of native species and transplants within constructed wetlands. The results are applied to the planning for the revegetation of the Nancy Street Wetland.

##### 1. Church of the Nazarene (CoN) Wetland, Mendenhall Valley

The Church of the Nazarene Wetland is located immediately upstream of the Nancy Street Wetland. The two wetlands are separated by a culvert. Similar to the Nancy Street Wetland, most of the water comes from groundwater seepages which carry iron into the surface water. The soils, geologic and human use are the same for both wetlands. The Church of the Nazarene wetland was part of the gravel pit and then filled in 1997 as part of a wetland reclamation project headed by K Koski of the Duck Creek Advisory Group. The reclamation utilized 20,000 cubic yards of fill composed mostly

Church of the Nazarene Wetland

Photo taken by Michele Elfers.





of sand and gravel from a stormwater improvement project in the floodplain of Duck Creek. Approximately 1000 cubic yards of peat were placed on top of the fill in a 6-10 inch lift. To accomplish the filling and planting, the water level in the pond was lowered using pumps. The fill was then added to allow for a stream channel 2-4 feet below the water surface elevation that covered 20 percent of the wetland. The remainder of the wetland was graded to allow for three different levels: 50 percent of the wetland is high marsh at 0-3 inches below water surface elevation, 15 percent of the wetland is mid-level marsh at 0-6 inches below water surface elevation, and 15 percent of the wetland is low marsh at 6-18 inches below water surface elevation. Plants were chosen for revegetation based on the established elevations.

#### **Low Marsh 6-18" water depth**

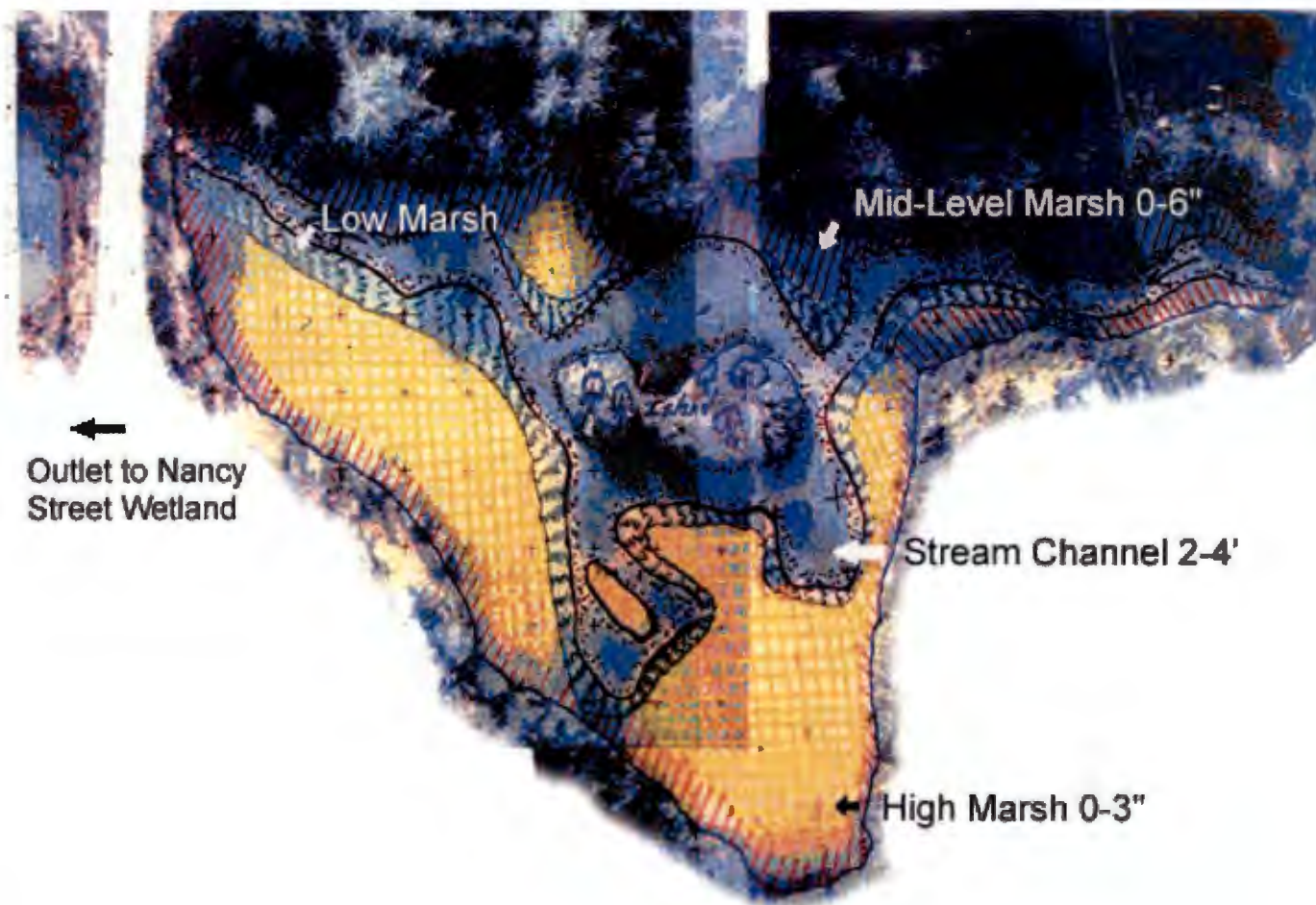
Nuphar luteum,  
*Yellow Pond Lily*  
Potamogeton gramineus,  
*Grass-Leaved Pondweed*  
Sparganium emersum,  
*Narrow-Leaved Burrweed*

#### **Mid-Level Marsh 0-6" water depth**

Carex aquatilis,  
*Water sedge*  
Equisetum fluviatile,  
*Swamp Horsetail*  
Caltha palustris,  
*Yellow Marsh Marigold*  
Menyanthes trifoliata,  
*Buckbean*  
Beckmania syzigachne,  
*American Slough Grass*

#### **High Marsh 0-3" water depth**

Carex aquatilis,  
*Water Sedge*  
Equisetum fluviatile,  
*Swamp Horsetail*  
Caltha palustris,  
*Yellow Marsh Marigold*  
Menyanthes trifoliata,  
*Buckbean*  
Beckmania syzigachne,  
*American Slough Grass*  
Carex sitchensis,  
*Sitka sedge*  
Calamagrostis canadensis,  
*Bluejoint Reed Grass*



**Figure 8.** Church of the Nazarene Plan  
Plan by K Koski.

The Wetland Enhancement Project for the Church of Nazarene Pond shows a grading plan that was developed to accomodate different plant communities. A meandering stream channel provides water to the marsh areas.

**Table 1.** Church of the Nazarene Plant Evaluation

site	water depth (cm)	% cover	live stems	description of quadrant	plant species
1a	7.5	90	57	saturated mud	horsetail, sitka sedge
1b	4	60	104	saturated mud	horsetail, sitka sedge
1c	3	95	14	saturated mud	horsetail, sitka sedge, blue joint grass
1d	14.5	35	17	standing water, iron oxide	horsetail, yellow marsh marigold
2a	5	75	50	saturated mud	horsetail, sitka sedge
2b	10.5	75	50	standing water	horsetail, sitka sedge
2c	6.5	35	37	saturated mud	horsetail, sitka sedge, western black willow, moss
2d	37.5	90	116	standing water, iron oxide	horsetail
3a	15	50	69	standing water	horsetail, sitka sedge, blue joint grass, bullrush
3b	35.5	95	89	standing water	horsetail, sitka sedge
3c	47.5	30	48	standing water	horsetail
3d	15.5	80	78	standing water	horsetail, sitka sedge
3e	12	20	9	standing water	sitka sedge
4a	13.5	40	90	standing water	carex, merten's sedge
4b	21.5	80	76	standing water	horsetail, sitka sedge
4c	22	40	32	standing water	horsetail

Table from "Inventory of Created Wetland and Baseline Data for Future Wetland Creation Sites". Hoferkamp, Lisa. Prepared for United States Fish and Wildlife Service, 2004-2005.



A combination of seeding, transplanting and planting of container grown stock were used for revegetation. During the transplanting, the plants that were dug from nearby wetlands were based more on availability and less on the planned species list. The plants were planted in rows four feet apart and with a spacing of two feet. Additionally, a local nursery planted upland species from container stock on a bank of the wetland (notes and plans from K Koski, 2005). Salix and Alder species were planted but did not survive. The wetland vegetation was counted and evaluated in 2004 by Lisa Hoferkamp, an assistant professor and a student at the University of Alaska, Southeast as part of a study of the water quality in the constructed wetland. Sixteen quadrants of .5 square meters were delineated within the saturated zone. Estimates of vegetative cover and an analysis of dominant species cover were performed.

The report estimates overall vegetative coverage of the wetland at 30-95 percent in 2004. This is an increase from an estimated 1 percent coverage in 1997 when it was first planted. The current plant community in the Church of Nazarene Wetland is dominated by Horsetail and Sitka Sedge with a few other species growing. According to the report by Lisa Hoferkamp, it is functioning as an iron sink and so the lack of diversity may not be a problem for this objective.

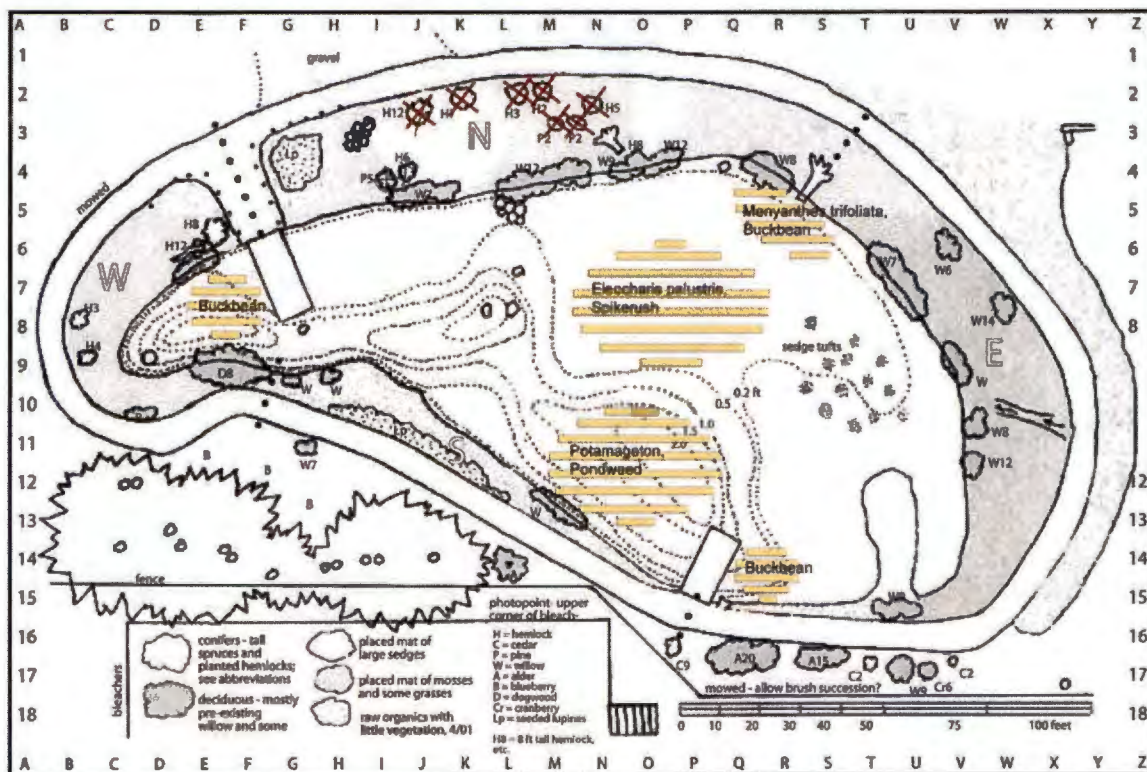
From the perspective that Nancy Street Wetland is part of ongoing experimentation and research into constructed wetlands in Southeast Alaska, expanding the diversity of the plant community may be beneficial to learn which types of plants colonize rapidly and if there are species that retain iron more efficiently. Species of Horsetail have long, thin root systems that may not be the most effective option for the trapping and retention of iron. Sedges, with dense fibrous root systems may be a better choice. Also, increasing the diversity of the plant community will allow for increased forage and habitat options for various species of birds and macro invertebrates.

## 2. Floyd Dryden Middle School Wetland, Mendenhall Valley

The Floyd Dryden Wetland is located north of the Nancy Street Wetland in the Mendenhall Valley. It occupies the post-glacial landscape but it does not have the same gravel extraction history. The constructed wetland is on school grounds and has been a wet area since the creation of the school. Surrounded by playfields and a building, it has become a detention



Photo taken by Michele Elfers.  
View of the Floyd Dryden Wetland in July 2005



**Figure 9.** Floyd Dryden Pond

Original plan from Richard Carstensen of Discovery Southeast.

Observation of major species colonization in July 2005 shows that the Hemlocks and Pines did not survive, the Sedge, Spikerush, Buckbean, and Pondweed did very well.

area for stormwater. Between 1999 and 2001 the current wetland was graded and planted. The deepest area is roughly 450 square feet at a depth of 2 feet below water surface elevation and the grade rises to approximately 2.5 inches below water surface elevation within a large area of the wetland.

Richard Carstensen of Discovery Southeast, a nature education organization in Juneau, developed a vegetation plan for the wetland. Hemlock, Cedar, Pine, Willow, Alder, Blueberry, Dogwood, Cranberry, mats of Sedges, mats of Moss and Grasses, and Lupine seeds were used for the revegetation. Observation in August of 2005 showed that within the saturated zone the plants that are thriving are species of Carex (Sedge), Equisetum (Horsetail), Eleocharis palustris (Spikerush), Menyanthes trifoliata (Buckbean), and species of Juncus (Rush). Moving out of the saturated zone into the uplands, Willows, Alders, and Dogwood are thriving. The Hemlocks and Pines are either dying or are very small plants and there are very few Lupine plants. There is little open water in the wetland and a species of Potamogeton densely covers a significant amount of surface area in the deeper water areas.



The failure of the Hemlock and Pine trees may be due to the lack of adequate soil conditions. Hemlock requires a soil with a high organic content that is rare in the recently deglaciated Mendenhall Valley. Native Pine trees only grow in peat bogs in this part of Southeast Alaska. Sedges, Spikerush and Buckbean have thrived in this wetland at water depths of 2-6 inches for the Spikerush and Sedges and 2.5 inches for the Buckbean. These species are potential candidates for the Nancy Street Wetland.

It is important to note in this wetland that the deepest water is 2 feet and that there is little open water without vegetation. Potamogeton as well as other aquatic species such as Nuphar polysepalum are able to grow in 2 feet of water. In order to diversify habitat at Nancy Street and encourage the macro invertebrate population, open water is desired and the deep water levels must be greater than 2 feet deep. A study by Nelson, Roline, et al. shows that in constructed wetlands for wastewater treatment, the most productive habitat for invertebrates is open water with oxygen producing submerged plants. The least productive habitat is open water that has a continuous cover of duckweed and low dissolved oxygen levels (2000).

### 3. Kingfisher Pond at the Juneau Police Department, Lemon Creek

Kingfisher Pond at the Juneau Police Department is located at the mouth of a glacial valley, Lemon Creek. The primary source of water is groundwater supplemented by runoff as well as a small amount of brackish tidal water that enters through a faulty control structure at the outlet of the pond. As a reclaimed gravel pit, iron seepage is a problem in this wetland as well as pre-reclamation dumping of oil and other contaminants.



Photo taken by Michele Elfers.  
View of Kingfisher Pond in July 2005

Between 2002 and 2003, the pond was filled and shaped to create a wetland and then planted with seeds, vegetative mats, and limited container stock plants. A section of the saturated zone was delineated to study the success of the seeding and the colonization of plants. The evaluation of the twelve study plots is recorded in Table 2. The evaluation is taken from observation in July 2005 of the plants growing compared to a seeding plan done at the time of revegetation. In the uplands area, Alder dominates, in some areas it is growing in dense thickets. There is also some Lupine, Dogwood, and



Highbush Cranberry in the upland areas. Both Tufted Hairgrass and Merten's Sedge have spread from saturated lowlands into well-draining upland areas. In the saturated areas to standing water, Small Leaf Bulrush, and Mare's Tail have colonized.

**Table 2.**  
Kingfisher Pond  
Plant Evaluation

Plot	Conditions	Seeded in 2000	Growing in 2005	Plot	Conditions	Seeded in 2000	Growing in 2005
1	Saturated	Merten's Rush	Merten's Rush	7	Moist ground, upslope	Hardtack Steeplebush	Merten's Sedge
			Merten's Sedge			Goat's Beard	Tufted Hairgrass
			Tufted Hairgrass				Lupine Alder
2	Saturated	Merten's Rush	Merten's Rush	8	Moist ground, upslope	Hardtack Steeplebush	Merten's Sedge
		Small Leaf Bulrush	Merten's Sedge				Tufted Hairgrass
			Tufted Hairgrass				Lupine Alder
3	Saturated	Control, no seeding	Merten's Rush	9	Moist ground, upslope	Control, no seeding	Merten's Sedge
			Merten's Sedge				Tufted Hairgrass
			Tufted Hairgrass				Lupine Alder
4	Saturated, beginning of upslope	Sawbeak Sedge	Merten's Sedge	10	Well-drained, upland	Tufted Hairgrass	Tufted Hairgrass
			Tufted Hairgrass				
5	Saturated, beginning of upslope	Control, no seeding	Merten's Sedge	11	Well-drained, upland	Tufted Hairgrass	Tufted Hairgrass
			Tufted Hairgrass			Meadow Barley	Meadow Barley
			Sawbeak Sedge				
6	Saturated, beginning of upslope	Merten's Sedge	Merten's Sedge	12	Well-drained, upland	Control, no seeding	Lupine
		Sawbeak Sedge					Alder

Data from observation in July 2005 and a Seeding Plan provided by the U.S. Fish & Wildlife Service.

A few species did not survive and many showed only one or two plants. *Spiraea douglasii*, or Hardtack Steeplebush was seeded but not growing on the site. This plant grows in southern Southeast Alaska, but it is not native to the northern part of the region. It will grow only in certain microclimates in this area and is therefore not hardy enough for a reclamation project. Meadow Barley, although native in this area, did not colonize successfully. The seeds may not have been viable, or the ground may have been too wet for the plants. This plant will not be recommended for revegetation of Nancy Street Wetland as literature suggests it is most successful in maritime areas (Pojar and Mackinnon, 1994). Sawbeak Sedge was only found in one area and may not be hardy enough to start from seed in a reclamation project.

By documenting the evaluation of these three constructed wetlands, interviews with local naturalists experienced in reclamation and revegetation projects, and literature pertinent to Southeast Alaskan plant communities, a table was created to document the successes, failures and potential for freshwater wetland species in reclamation wetlands. (See Appendix 1).

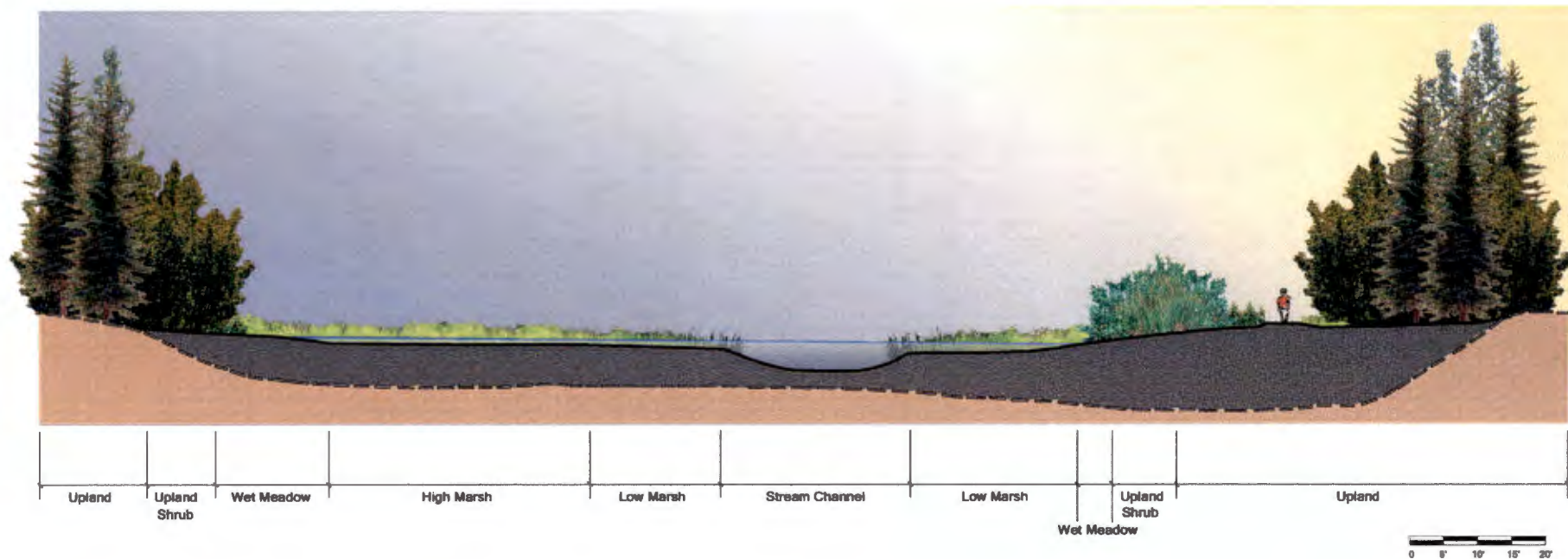
At the Nancy Street Wetland, plants have been selected based on the assessment and evaluation of their success in constructed wetlands in the region, experience of local naturalists, their ability to be transplanted or seeded, and their potential for the phytoremediation of iron. For the purpose of a planting design the plants were divided into zones based on the depth of water in which they grow. (See Table 3). The Nancy Street Wetland is designed with a water surface elevation of 28 feet. Although the Nancy Street Wetland is primarily ground water fed, runoff has been observed to affect water levels significantly in different seasons. However, the water level will fluctuate throughout the season with the rise and fall of precipitation rates. Rainfall increases between July and November and decreases between January and April. For this reason, the communities and water depths are general and meant as guidelines only. The zones are delineated on the wetland planting plan in Figures 10 and 11.

The deep water zone consists of the stream channel that flows from the inlet culvert to the outlet culvert as well as two deep pools at either end. This zone covers 55,000 square feet and is 28 percent of the total area to be revegetated. However, less than 5 percent of this area will be planted. Water will be 4 feet deep through most of this area with greater depths in each deep pool. This zone will be planted with *Potamogeton natans* (Floating Pondweed), *Sparganium angustifolium* (Narrow Leaved Burreed) , and *Nuphar polysepalum* (Yellow Pond Lily). The first two species were observed growing in the Nancy Street Pond prior to filling. Both are present upstream in the Church of the Nazarene



**Figure 10. Planting Communities**

The revegetation plan for the Nancy Street Wetland incorporates different plant communities based on elevation above the water surface. This revegetation plan was developed prior to the completion of the trail design.



**Figure 11.** Typical Planting Zone Elevation

The revegetation plan for the Nancy Street Wetland is based on the elevation of the land above or below the water surface.



Pond. *Sparganium* is known to be a local food for muskrat. *Nuphar polysepalum* is found in a nearby pond downstream of the Nancy Street Wetland.

The low marsh zone covers 30,000 square feet and comprises 15 percent of the total area to be revegetated. The land between the stream channel and the high marsh 'fingers' is designed to the elevation of 27 feet to 27.5 feet. The plants in this zone include *Carex sitchensis* (Sitka Sedge), *Eleocharis palustris* (Spikerush), *Juncus mertensianus* (Merten's Rush), and *Scirpus microcarpus* (Small Leaf Bulrush). All of these plants have been successful at colonizing constructed wetlands in Juneau and can be transplanted or started by seed. *Carex sitchensis* is one of the two dominant plants in the Church of the Nazarene Wetland. The dense root system of this plant may be capable of retaining large amounts of iron.

The stream channel winds around fingers of high marsh zone areas at an elevation of 27.5 feet to 28 feet. The high marsh zone encompasses 35,000 square feet and covers 18 percent of the total area to be revegetated. *Carex sitchensis* and *Eleocharis palustris* have exhibited the ability to survive in a variety of water levels. They will transition the communities from low marsh to high marsh zones. Other plants in this zone include *Carex mertensii* (Merten's Sedge), *Juncus effusus* (Common Rush), *Lysichiton americanum* (Skunk Cabbage), *Deschampsia cespitosa* (Tufted Hairgrass), and *Menyanthes trifoliata* (Buckbean). All of these plants have been grown successfully in the constructed wetlands in Juneau. The *Lysichiton americanum* grows throughout Juneau in shaded wetland edges or stream banks. In the early spring it 'blooms' with a yellow spadex that is very attractive and provides food for animals. It has been transplanted successfully by naturalists in the region.

At the edge of the standing water zones is the transition zone of wet meadow. This zone is at an elevation of 28 feet to 29 feet and will be saturated most of the time and may flood during parts of the year. The wet meadow covers 12,000 square feet and comprises 6 percent of the total area to be revegetated. Many plants that can tolerate different water levels and periodic flooding are planted here. *Carex mertensii*, *Deschampsia cespitosa* ssp. *beringensis*, and *Juncus effusus* will all do well closer to the water's edge. Moving up through this zone, grasses and flowering plants that do well in wet meadows are planted. *Calamagrostis canadensis* (Bluejoint Reedgrass), *Festuca rubra* (Red Fescue), *Viola palustris* (Marsh Violet), *Frittilaria camschatcensis* (Chocolate Lily), *Iris setosa* (Wild Flag), *Lupinus nootkatensis* (Lupine), and *Aquilegia formosa* (Columbine) thrive in saturated soils and provide color during the summer season.

The wet meadow zone and the upland shrub zone will be indistinguishable in many areas as many of these plants thrive in saturated to moist soils. The upland shrub zone is delineated from 29 feet to 30 feet and covers 11,500 square feet. It comprises 6 percent of the total area to be revegetated. Many grasses and flowering plants including *Deschampsia cespitosa* (Tufted Hairgrass), *Calamagrostis canadensis* (Bluejoint Reedgrass), *Festuca rubra* (Red Fescue), *Aquilegia Formosa* (Columbine), and *Lupinus nootkatensis* (Lupine) will form the transition from wet meadow to upland shrub. Also in this zone will be *Cornus stolonifera* (Dogwood), *Salix barclayii* (Barclay's Willow), *Salix sitchensis* (Sitka Willow), *Alnus viridus* (Sitka Alder), *Aruncus dioicus* (Goat's Beard), *Rubus spectabilis* (Salmonberry), and *Viburnum edule* (Highbush Cranberry). The *Salix*, *Alnus*, *Aruncus* and *Viburnum* species were all observed on this site prior to filling.

Above 30 feet elevation is the well-drained upland zone. The uplands to be revegetated cover 52,500 square feet and 27 percent of the total area to be revegetated. The plants include many of the shrubs from the upland shrub zone: *Aruncus dioicus*, *Cornus stolonifera*, *Rubus spectabilis*, *Viburnum edule*, *Alnus viridus*, *Salix barclayi*, and *Salix sitchensis*. Additional trees to be planted that exist elsewhere on the site are *Populus balsamifera* (Cottonwood), *Alnus rubra* (Red Alder) and *Picea sitchensis* (Sitka Spruce). An understory of grasses and herbaceous perennials include *Festuca rubra*, *Calamagrostis canadensis* and *Aquilegia formosa*.

From this general planting zone plan in Figure 10, a detailed planting design for the uplands and upland shrub zones was created. This allows for numbers of each species needed for transplant, purchase or seeding. The design strives to create diversity in plantings to allow for habitat diversity while also considering the experience of the visitor along the trail, and the relationship of the adjacent private property owners to the wetland and the trail. For example, Detail 5 in Appendix 5 shows clusters of *Rubus spectabilis*, *Cornus stolonifera*, and *Viburnum edule*. These shrubs fruit from mid summer into fall and provide food into the winter for birds and small animals. Also, a combination of *Picea sitchensis* groupings as well as deciduous trees of *Alnus* and *Populus balsamifera* allow for varied habitat for birds. Detail 3 in Appendix 3 shows a narrow buffer between the adjacent property owners and the trail and wetland. The large cluster of *Alnus* and *Picea* is in front of homes with fencing. This choice of trees will further separate the homes from the wetland and trail.

The diverse planting communities represent the ideal revegetation plan. However, the objective of using only native plants limits the availability and spectrum of species that can be obtained and planted in the wetland. Native plant



nurseries and native seed sources do not exist in Southeast Alaska. Small amounts of native seeds are available in the area from individuals who collect seed seasonally. A few native species of grasses are sold commercially in the northern part of Alaska. The best solution to the reclamation of wetlands in Juneau is to gather wetland seed in the years prior to the reclamation of the wetland and then start them in greenhouses based on the specific needs of the plants. This process works well if the reclamation of the wetland is planned at the time of the surface mining or land disturbance. However, the circumstances of the Nancy Street Enhancement Project do not allow for the gathering and starting of seed. Therefore, transplanting of plugs will be the major source of revegetation, with some hardwood cuttings and seeding.

## V. Vegetation Process and Commentary

The planning and design of the revegetation process provided a guide for the actual implementation. However, the decision by the resource agencies to focus on transplanting of local plants to preserve local gene stock and minimize the purchase of plants largely determined the revegetation process. For a 6 acre revegetation, transplanting is feasible, but for a freshwater emergent wetland that is much larger, the limitations of transplanting may warrant a different strategy.

For the Nancy Street Wetland revegetation, the availability, accessibility, and diversity of source wetlands determined the process (See Tables 3,4). Source wetlands were selected in the Mendenhall Valley and Lemon Creek to minimize cost and driving time to Nancy Street. Additionally, only wetlands that were accessible for a crew with a vehicle were considered. The ownership of the wetlands ranged from CBJ land, U.S. Coast Guard land to private land. In all cases, permission for access and transplanting was granted. Another consideration in choosing source wetlands was the size of plant population present for the targeted species. The population had to be large enough to be able to remove a sizable quantity without decimating or affecting the source wetland population.

With all of these limitations, it was difficult to find appropriate wetlands to source plants. The majority of the Nancy Street wetland is freshwater marsh with emergent species, however in Juneau there is much more forested wetland habitat than emergent wetland. The revegetation of an emergent wetland much larger than Nancy Street would be very difficult using only transplants. The source wetlands used for Nancy Street should not be used again for at least two years and finding adequate populations of emergent species may be difficult. A potential source that exists for this type of wetland is along Department of Transportation (DOT) Right of Ways. There are many drainage ditches along Glacier Highway, particularly between Fred Meyer's and McDonald's in the Valley that are sedge and bulrush emergent wetlands. DOT utilizes SAGA crews for maintenance of Right of Ways to prune and remove shrubs and trees. An opportunity exists for a partnership to be formed with DOT where SAGA crews maintain and transplant simultaneously on future reclamation projects.

In addition to the transplanting of emergent wetland species, the revegetation included cuttings of willow and cottonwood, transplanting of berry shrubs and alder, and seeding. To accomplish these tasks, various sources of labor were used over a period of five months. Volunteers cut stakes in April and planted in June, paid SAGA workers transplanted emergent species and seeded in June and July, and paid Trail Mix workers transplanted trees and shrubs in August (See Table 4).

While the volunteers only worked for two days, their work in taking cuttings of willow, cottonwood and high bush cranberry was very important to the revegetation of the upland shrub and upland zones. Also, the involvement of community volunteers raised enthusiasm and support for the project. The volunteers were members of Full Circle Farms, a farm and distributor of organic produce in Juneau. The farm solicited volunteers through emails and donated \$5000 to the project. The cuttings were taken on April 8 with twenty volunteers. The group divided in three and went to sites near Back Loop Road. With pruners, 1000 Barclay's Willow stakes, 200 High Bush Cranberry stakes, and 75 Black Cottonwood stakes were cut. Full Circle Farms donated the use of their cold storage facility in Lemon Creek to hold the cuttings until planting. On June 7, fifteen volunteers planted the cuttings at Nancy Street. Many of the stakes were cut in half or thirds. Steel rods with mallets or sharp pointed shovels were used to plant single stakes or bouquets of 3-5 stakes. The High Bush Cranberry stakes all died in storage, however many of the willow and cottonwoods sent out roots and shoots.

For the next phase in planting, the U.S. Fish & Wildlife Service contracted a SAGA crew for 4 weeks. In 13 days, the crew worked approximately 650 labor hours. They accomplished 70% of the revegetation process by planting 3600 plugs, shrubs and small trees and seeding portions of the wetland. The crew developed efficient methods for transplanting and solved problems effectively throughout the four weeks. Each day, two workers stayed at the wetland and used an augur to dig holes in the soil for planting. The other six crew members went to the source wetland. To extract plants they found that a sharp shovel was most effective. Often they would take small mats and then cut them into plugs using a knife or sharp shovel. They suggested using a hand held shovel to cut the mats in the future. They found that bulb planters were time consuming and difficult to use in gravel or dense mud. To remove shrubs, pulaskis were the most efficient and shovels were used for trees. Despite the efficient work of the crew, the lack of proper gear and equipment at the start of the project slowed down progress. The crew needed shoulder length waterproof gloves, hip waders, rubber boots, and five gallon buckets for transporting plants. Additionally, throughout the four weeks, the augur would break down and slow progress. Better preparation and support for the crew is needed in the future.

SAGA accomplished most of the remaining revegetation work; however the grading and shaping of the outlet channel, earthen dam, and trail were not completed in time to finish the planting. Trail Mix crews transplanted alders and berry bushes into the upland and upland shrub areas and a small amount of sedges along the boardwalk and earthen dam using similar techniques as SAGA. Additionally, CBJ staff purchased and planted *Cornus stolonifera* plugs along the steep

northeast slope on the Church of the Nazarene property. These plants were purchased because of the significant benefit to the project and the lack of an appropriate population from which to take cuttings in Juneau. They grow rapidly in the Juneau climate, provide berries for birds, and control erosion with spreading rhizomes. CBJ also purchased and spread seed throughout the five month period of revegetation for erosion control and habitat enhancement.

To improve on the revegetation process for future projects, better planning for irrigation should be in place prior to transplanting. This summer in Juneau was very rainy with only a few periods of sunny dry weather. However, for two weeks in June, the sun came out and dried the high marsh area. During the revegetation period, the water level was approximately 1-3 inches below the high marsh elevation. The rocky and sandy topsoil combined with the silty fill dried in sunny conditions to form a cement like consistency. Watering was necessary to keep the plants alive during this period. SAGA crews used buckets and a garden quality gasoline powered water pump to irrigate the wetland. If the dry sunny weather persisted, these methods would not be able to keep the plants alive. To prevent this from happening on future projects a soil with a higher organic content would help to retain moisture better in dry conditions. Also, working with the Department of Public Works to obtain a permit for fire hydrant access would allow for an appropriate water source. Other strategies include the control of water levels to keep soil saturated while planting or the delay of planting until July when precipitation is more frequent.

Table 3: Recommended Plant Species

Actual Planted Species

<b>Low and High Marsh</b>		<b>Low and High Marsh</b>	
<i>Species</i>	<i>Common Name</i>	<i>Species</i>	<i>Common Name</i>
<i>Caltha palustris</i>	Marsh Marigold	<i>Caltha palustris</i>	Marsh Marigold
<i>Carex sitchensis</i>	Sitka Sedge	<i>Carex sitchensis</i>	Sitka Sedge
<i>Eleocharis palustris</i>	Spike Rush	<i>Eleocharis palustris</i>	Spike Rush
<i>Scirpus microcarpus</i>	Small Leaved Bulrush	<i>Scirpus microcarpus</i>	Small Leaved Bulrush
<i>Juncus mertensianus</i>	Merten's Rush	<i>Carex lyngbae</i>	Lyngby's Sedge
<i>Lysichiton americanum</i>	Skunk Cabbage		
<i>Menyanthes trifoliata</i>	Buckbean		
<i>Carex mertensii</i>	Merten's Sedge		
<i>Calamagrostis canadensis</i>	Blujoint Reedgrass		
<i>Deschampsia cespitosa</i>	Tufted Hairgrass		
<b>Wet Meadow</b>		<b>Wet Meadow</b>	
<i>Aquilegia formosa</i>	Western Columbine	<i>Aquilegia formosa</i>	Western Columbine
<i>Calamagrostis canadensis</i>	Bluejoint Reedgrass	<i>Calamagrostis canadensis</i>	Bluejoint Reedgrass
<i>Deschampsia cespitosa</i>	Tufted Hairgrass	<i>Deschampsia cespitosa</i>	Tufted Hairgrass
<i>Fritillaria camschatcensis</i>	Chocolate Lily	<i>Fritillaria camschatcensis</i>	Chocolate Lily
<i>Iris setosa</i>	Iris	<i>Iris setosa</i>	Iris
<i>Aconitum delphinifolium</i>	Monkshood	<i>Lupinus nootkatensis</i>	Lupine
<i>Dodecatheon pulchellum</i>	Shooting Star	<i>Hierchloe odoratum</i>	Sweet Grass
<i>Eriophorum angustifolium</i>	Cottongrass		
<i>Viola palustris</i>	Marsh Violet		
<b>Upland Shrub</b>		<b>Upland Shrub</b>	
<i>Alnus viridus</i>	Sitka Alder	<i>Alnus viridus</i>	Sitka Alder
<i>Aruncus dioicus</i>	Goat's Beard	<i>Aruncus dioicus</i>	Goat's Beard
<i>Cornus stolonifera</i>	Red Twig Dogwood	<i>Cornus stolonifera</i>	Red Twig Dogwood
<i>Rubus spectabilis</i>	Salmonberry	<i>Rubus spectabilis</i>	Salmonberry
<i>Salix barclayi</i>	Barclay's Willow	<i>Salix barclayi</i>	Barclay's Willow
<i>Salix sitchensis</i>	Sitka Willow	<i>Festuca rubra</i>	Red Fescue
<i>Viburnum edule</i>	High Bush Cranberry	<i>Rubus parviflorus</i>	Thimbleberry
		<i>Alnus rubra</i>	Red Alder
<b>Upland</b>		<b>Upland</b>	
<i>Alnus rubra</i>	Red Alder	<i>Alnus rubra</i>	Red Alder
<i>Alnus viridus</i>	Sitka Alder	<i>Alnus viridus</i>	Sitka Alder
<i>Cornus stolonifera</i>	Red Twig Dogwood	<i>Cornus stolonifera</i>	Red Twig Dogwood
<i>Picea sitchensis</i>	Sitka Spruce	<i>Picea sitchensis</i>	Sitka Spruce
<i>Populus balsamifera</i>	Black Cottonwood	<i>Populus balsamifera</i>	Black Cottonwood
<i>Rubus spectabilis</i>	Salmonberry	<i>Rubus spectabilis</i>	Salmonberry
<i>Salix barclayi</i>	Barclay's Willow	<i>Salix barclayi</i>	Barclay's Willow
<i>Salix sitchensis</i>	Sitka Sedge	<i>Rubus parviflorus</i>	Thimbleberry
<i>Viburnum edule</i>	High Bush Cranberry	<i>Festuca rubra</i>	Red Fescue



Table 4: Record of Planting Quantity, Source and Labor

Date	Species	Type	Quantity	Source	Labor
18-Apr	<i>Festuca rubra</i>	seed	10 lbs	Alaska Mill and Feed	USFWS
7-Jun	<i>Salix barclayi</i>	cutting	1500	Wren Drive/Back Loop Road	volunteer
7-Jun	<i>Populus balsamifera</i>	cutting	150	Behind Community Gardens	volunteer
13-Jun	<i>Carex lyngbae</i>	plug	130	Coast Guard Wetland	SAGA
14-Jun	<i>Carex sitchensis</i>	plug	450	Duck Creek by Superbear	SAGA
14-Jun	<i>Caltha palustris</i>	plug	40	Duck Creek by Superbear	SAGA
15-Jun	<i>Carex</i>	plug	300	Coast Guard Wetland	SAGA
15-Jun	<i>Carex sitchensis</i>	plug	375	Church of Nazarene Wetland	SAGA
15-Jun	<i>Carex sitchensis</i>	plug	200	Church of Nazarene Wetland	SAGA
19-Jun	<i>Calamagrostis/ Deschampsia</i>	plug	164	Lemon Creek Wetland	SAGA
19-Jun	<i>Fritillaria camschatensis</i>	plug	34	Lemon Creek Wetland	SAGA
19-Jun	<i>Hierchloe odoratum</i>	plug	31	Lemon Creek Wetland	SAGA
19-Jun	<i>Iris nootkatensis</i>	plug	31	Lemon Creek Wetland	SAGA
20-Jun	<i>Calamagrostis/Deschampsia</i>	plug	276	Lemon Creek Wetland	SAGA
20-Jun	<i>Fritillaria camschatensis</i>	plug	83	Lemon Creek Wetland	SAGA
20-Jun	<i>Hierchloe odoratum</i>	plug	49	Lemon Creek Wetland	SAGA
20-Jun	<i>Iris nootkatensis</i>	plug	60	Lemon Creek Wetland	SAGA
21-Jun	<i>Rubus spectabilis</i>	transplant	200	Duck Creek by Superbear	SAGA
22-Jun	<i>Carex sitchensis</i>	plug	20	Duck Creek by Superbear	SAGA
22-Jun	<i>Picea sitchensis</i>	transplant	8	DOT ROW Loop Rd	SAGA
23-Jun	<i>Lupinus nootkatensis</i>	seed	unweighed	US Forest Service, Ketchikan	NRCS
26-Jun	<i>Eleocharis palustris</i>	plug	100	Coast Guard Wetland	SAGA
26-Jun	<i>Scirpus microcarpus</i>	plug	100	Lemon Creek Wetland	SAGA
27-Jun	Thimbleberry	transplant	55	DOT land on channel by GCI	SAGA
27-Jun	<i>Rubus spectabilis</i>	transplant	35	Duck Creek by Superbear	SAGA
29-Jun	<i>Carex</i>	plug	175	DOT ROW north of SE Vet	SAGA
29-Jun	<i>Festuca rubra</i>	seed	20 lbs	Alaska Mill and Feed	SAGA
29-Jun	<i>Calamagrostis canadensis</i>	seed	10 lbs	Alaska Mill and Feed	SAGA
29-Jun	<i>Deschampsia cespitosa</i>	seed	10 lbs	Alaska Mill and Feed	SAGA
30-Jun	<i>Cornus sericea</i>	plug	216	Nat's Nursery, BC	CBJ
30-Jun	<i>Festuca rubra</i>	seed	10 lbs	Alaska Mill and Feed	CBJ
30-Jun	<i>Calamagrostis canadensis</i>	seed	10 lbs	Alaska Mill and Feed	CBJ
30-Jun	<i>Deschampsia cespitosa</i>	seed	8 lbs	Alaska Mill and Feed	CBJ
5-Jul	<i>Carex</i>	plug	490	DOT ROW north of SE Vet	SAGA
6-Jul	<i>Carex</i>	plug	245	DOT ROW north of SE Vet	SAGA
20-Jul	<i>Picea sitchensis</i>	transplant	?	DOT ROW Loop Rd	CBJ
20-Jul	<i>Festuca rubra</i>	seed	20 lbs	Alaska Mill and Feed	CBJ
20-Jul	<i>Calamagrostis canadensis</i>	seed	5 lbs	Alaska Mill and Feed	CBJ



cont. Table 4: Record of Planting Quantity, Source and Labor

Date	Species	Type	Quantity	Source	Labor
20-Jul	<i>Deschampsia cespitosa</i>	seed	5 lbs	Alaska Mill and Feed	CBJ
24-Jul	<i>Cornus stolonifera</i>	transplant	17	old Fred Meyer landscape	CBJ
26-Jul	<i>Rubus spectabilis</i>	transplant	24	Duck Creek by Superbear	Trail Mix
7-Aug	<i>Carex sitchensis</i>	plug	50	Church of Nazarene Wetland	Trail Mix
8-Aug	<i>Alnus</i>	transplant	100	Duck Creek by Superbear	Trail Mix
9-Aug	<i>Rubus spectabilis</i>	transplant	60	Duck Creek by Superbear	Trail Mix
15-Aug	<i>Festuca rubra</i>	seed	40 lbs	Alaska Mill and Feed	CBJ
15-Aug	<i>Deschampsia cespitosa</i>	seed	10 lbs	Alaska Mill and Feed	CBJ
		Total Quantity	4993		



Above: Volunteer planting of willow and cottonwood cuttings in June. Right: Cuttings send out leaves in August.



Above: SAGA extracts sedges from a wetland in Lemon Creek. Right: Transport of sedges and marsh marigold in buckets.





Above: SAGA plants wet meadow grasses.  
Right: Low marsh and high marsh sedges  
and bulrushes.



Left: Alders transplanted along  
stream channel.

Photos taken by Michele Elfers.

## VI. Trail Design and Construction

The design and development of a community trail through the wetland has become an important component to gaining public approval and support of the project. Adjacent landowners initially viewed the reclamation project as disruptive, but through the process of filling, planting and trail construction, many neighbors and community members have expressed that the reclamation is an improvement to the neighborhood. It offers recreational opportunities for a neighborhood of streets and private property and it allows access to a successional landscape with a fantastic view of the Mendenhall Glacier (See Figure 12-14).

CBJ applied for a Recreational Trails Grant through the Department of Natural Resources, Division of Parks and Outdoor Recreation. To administer the grant funds, the CBJ Engineering Department, the CBJ Department of Parks and Recreation, and Trail Mix formed a partnership to accomplish the administration, construction and management of the trail. The Engineering Department was responsible for the design, permitting and construction oversight, the Department of Parks and Recreation provided equipment, design review, and maintenance and management of the completed trail, and Trail Mix constructed the trail and administered the grant.

The trail construction began in July 2006 and continued through August. A few details will be completed in late fall and early spring such as the installation of trash cans and interpretive signage. Silty gravel forms a compact base for the six foot wide trail. A deck is sited at the south end to capture a remarkable view across the wetland of the Mendenhall Glacier. An island at the north end is accessed by a bridge and boardwalk and offers a bench and viewing point south. Eight steel pilings and a frame of treated lumber support the observation deck. The decking on the observation deck and boardwalk, railings, and benches are recycled plastic lumber. The 70' bridge is a steel gangway removed over the summer from a CBJ Ports and Harbors project.

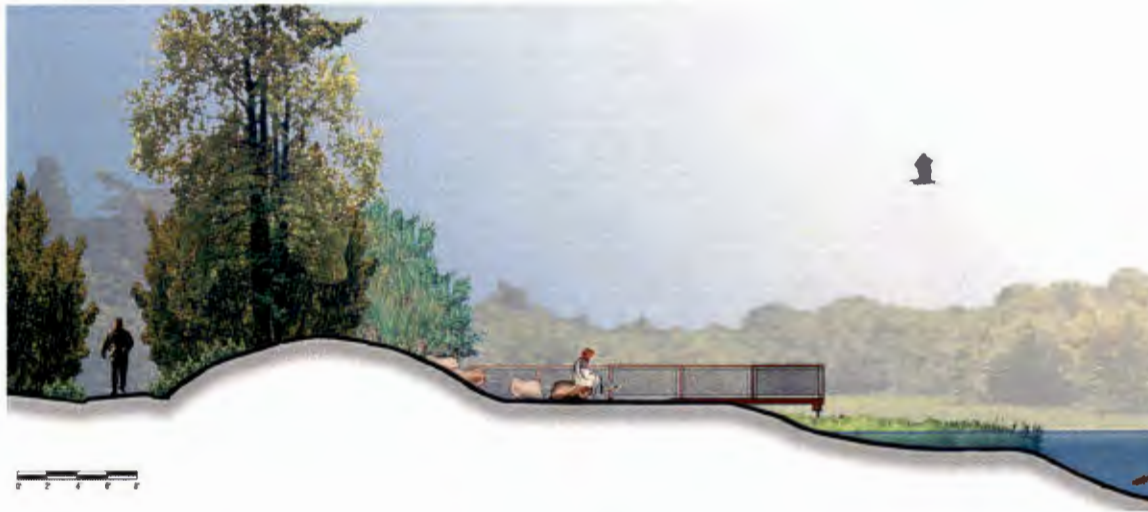
Many of the materials and labor were donated to allow completion of the trail with only grant funding. The bridge and benches were donated by CBJ Ports and Harbors, the rough grading and shot rock placement on the trail was donated by Glacier State Contractors, and the construction of the observation deck was done by the U.S. Coast Guard Engineers in Juneau.



**Figure 12. Trail Master Plan**

The trail design includes the extension north of the trail to the Church of Nazarene Wetland. This extension was not constructed. Currently, the trail connects to the Mendenhall Bike Loop Path.





**Figure 13.** Cross Section of the Observation Deck

The deck is sited to allow for close viewing of open water and to capture a magnificent view of the Mendenhall Glacier as a backdrop to the wetlands.

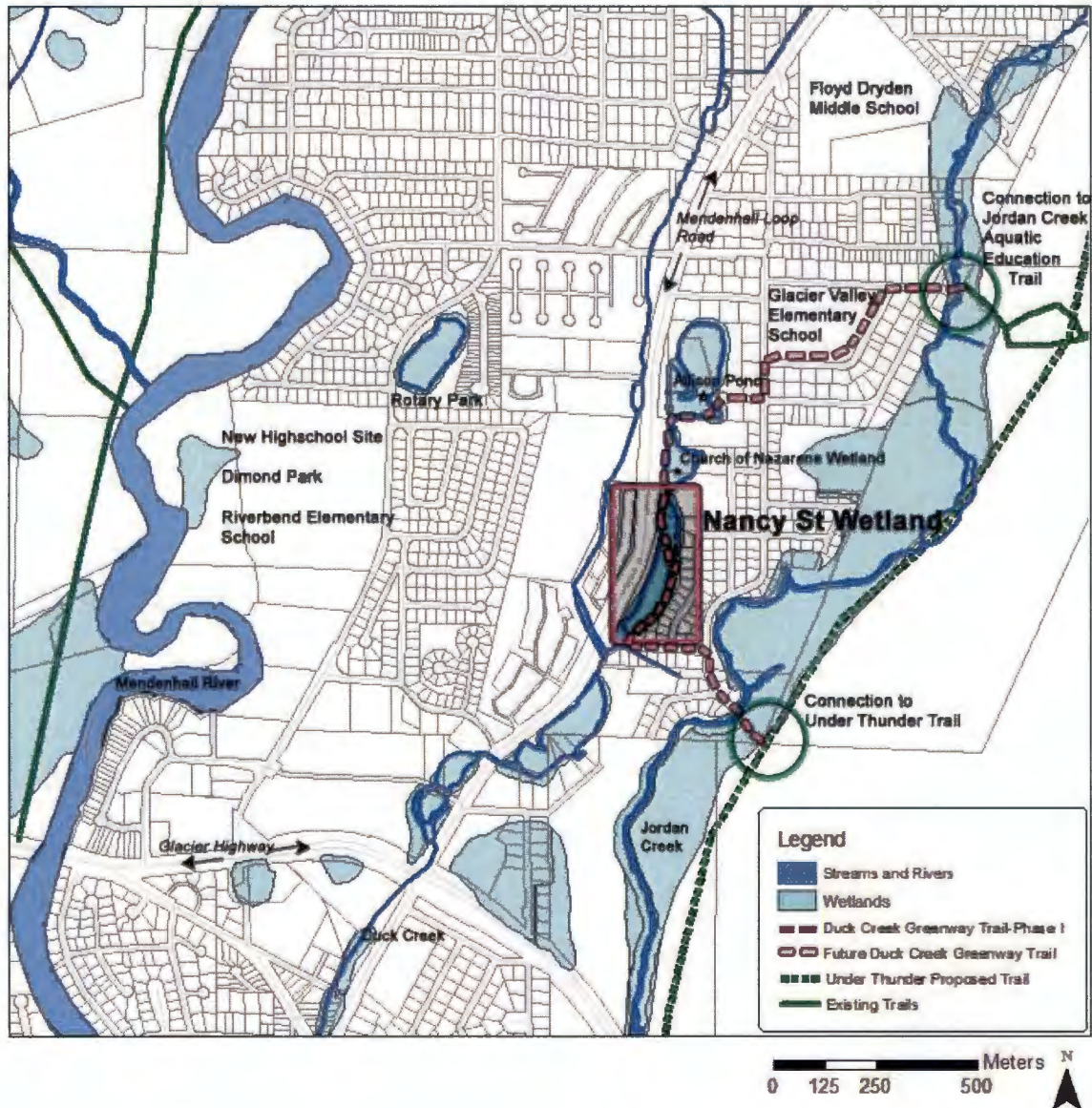


**Figure 14.** Cross Section of the Bridges

The two bridges across the wetland are connected by an island. The first is a 25' wooden boardwalk across emergent wetlands, the second is a 70' steel bridge with metal grate decking across the stream channel. On the island, a gravel seating area with boulders allows for resting and wildlife viewing.



The constructed trail represents Phase I of the Duck Creek Greenway Trail that will extend through the Nancy Street Wetland and the upstream Church of Nazarene Wetland and the Allison Pond (See Figure 15). Ultimately, it will connect from the north and south to the Under Thunder trail to form a loop. The creation of a trail that links the three wetlands will raise awareness of the ecological connection for fish, birds and other wildlife among these stepping stone habitats.



**Figure 15.** Duck Creek Greenway Trail Master Plan.

The trail through Nancy Street will connect the three former gravel pits to provide neighborhood connections, recreational opportunities, and to increase awareness of the ecological connections among the enhanced wetlands.

Glacier State shaped the rough trail bed and placed shot rock in May.



Trail Mix hauls gravel to build the trail across the island in August.

Trail Mix drives pilings for the observation deck and shapes the gathering area.







The finished bridge and boardwalk cross the wetland to an island with a bench for viewing.

Right: The steel gangway donated by CBJ Ports and Harbors extends from the northwest end of the trail to the east side. Trail Mix built new cedar rails for safety.



Below: The finished observation deck and gathering area.



## VII. Monitoring and Maintenance

The monitoring and maintenance plan for the Nancy Street Wetland addresses issues of survival and performance of wetland vegetation, changes in wetland composition, the control of invasive species, and the general upkeep of the trail and interpretive areas. The plan for monitoring of wetland vegetation is informed by a plan for wetland monitoring in Bellevue, Washington by Herrera Environmental Consultants, a guide to “Wetland Restoration, Creation, and Enhancement” written by various federal resource agencies, and research done by Elzinga, Salzer, and Willoughby in *Measuring and Monitoring Plant Populations*. The plan for trail maintenance is based on observations of wetland trail requirements over time in Juneau.

### *Monitoring Plan*

It is proposed that this work be performed in conjunction with the existing UAS water and fish monitoring plan and the data be combined into one report.

1. Establish plots in different plant community zones to measure species composition, aerial cover, and vegetative density. Measure water level above ground surface. Take measurements once per year in late July from 2007 to 2012. See Appendix XX for plot locations.
  - a. Plot 1 Upland - monitor a 5 meter radius around stake.
  - b. Plot 2 Island – monitor the entire island.
  - c. Plot 3 Emergent – monitor a 1 meter radius around stake.
  - d. Plot 4 Emergent – monitor a 1 meter radius around stake.
2. Establish 4 photopoints that capture each plot and 2 photopoints that capture emergent wetland, one from the observation deck looking north to the glacier and the second from the bench on the island looking south to the observation. See Appendix 2b and 2c for photopoints and 2006 photographs.
3. Complete table of information and draw maps recording the location, density and cover of each plot. See Appendix 2a for baseline data and sample table.

### *Maintenance Plan*

The Nancy Street Wetland will be transferred to the CBJ Parks and Recreation Department for management. This department and Trail Mix can coordinate to maintain the trail using the excess trail grant money.

1. Prune and clear shrubs and trees obstructing passage along the trail.
2. Empty garbage cans, refill doggy bag dispenser and remove garbage from the trail.
3. Clear drainage culverts along trail.

## VIII. Conclusion

The Nancy Street Wetland Enhancement Project offers an economically feasible, ecologically beneficial, and socially supported model of wetland reclamation for municipalities. Based on the data and assessment of the design and construction presented in this report, the project has been successful in the aspects of earthwork, transplanting, cost benefit and public participation. However, areas of improvement include the refining of final water levels, soil quality, and irrigation strategies during transplanting.

The design and implementation of the filling process determined largely the improvement of habitat, the efficiency of operations, and the accuracy of the as-built site to the design. By filling and completing each finger and section of the wetland individually, greater variety and attention to each landform was introduced. The other option, filling the entire site and then returning to dredge the stream channel would have resulted in less diversity of habitat and less attention to the design details. There is some concern that the water level is higher than the designed level. However, the rainfall was higher than average in 2006, so it is difficult to tell if the water levels in the wetland will drop. Designing elevations to within 3 inches to allow for necessary habitat for plants and wildlife is very difficult on a project where over 60,000 CY of fill are being placed. For this reason, designing a dam with adjustability to account for the discrepancy in water level would improve the function and success of the project.

The high rainfall this summer maintained a moist planting substrate throughout most of the summer. In late June, a sunny period of two weeks revealed the problems that would have been encountered had it been a drier summer. The soil dried and cracked around the newly transplanted plants and a hasty irrigation plan of buckets and a garden pump with hose was used to keep the plants alive. An irrigation plan should be in place prior to the revegetation phase. Tapping into city water through fire hydrants, or a private source are two potential solutions. Also, improving the quality of topsoil will improve moisture retention. The mineral topsoil had little organic content and was full of rock and cobble. Plant survival in 2007 will reveal whether higher quality topsoil is needed. At the end of the 2006 planting season, there was approximately 70% survival rate of transplanted species. Based on this estimate, the revegetation effort was very successful.

In addition to the improvement of fish and wildlife habitat, the other measure of success of the Nancy Street Wetland Enhancement is the strong base of public support. Throughout the construction process, volunteers donated time,



materials and money to the project. Many neighbors began to come out during the summer construction and comment on how happy they were about the project.

As a result of the success of this project, a similar process is planned for the Allison Pond upstream of the Nancy Street Wetland. The process will be improved based on this assessment and applied to the Allison Pond site needs. The CBJ has saved the community money by pioneering this alternative option to fill disposal. The support of the U.S. Fish & Wildlife Service and the Natural Resource Conservation Service has enhanced habitat for fish and wildlife and reclaimed a valuable community resource.

Plant List for Freshwater Wetlands											
Scientific Name	Common Name	Recommendation by	Water Level	Height	Transplant Potential	Seed Potential	Wildlife Benefits	Human Benefits	Iron phytoremediation	Liabilities	Other Issues
<b>Deep Water</b>											
<i>Caltha natans</i>	Floating Marsh Marigold	Book	aquatic floating	1-3'				attractive flower			floats or creeps in mud, stolons root at nodes
<i>Nuphar polysepalum</i>	Yellow pond-lily	Patti Krosse, Ed Buyarski	3-4' average water depth, up to 6' stalk		successful, use fork or clam digger to dig up entire root, or monofilament tied to root with rock to get plant it.		food, habitat for fish, cover for ducklings, frog habitat	very attractive open water flower		Patti-very difficult to dig roots, often extensive, and hard to get roots back into the water completely	found in pond near Superbear, very shallow water, may be easy to remove
<i>Potamogeton natans</i>	Floating Pondweed	Observed at Nancy Street	aquatic floating from bottom 3-8'		yes		very valuable food source for mallards and other marsh birds		Existed in Nancy Street Pond so it is tolerant of iron	In CoN it forms a dense cover in open water areas, too much shade and it may limit macroinvertebrate population	present at Nancy Street Pond prior to filling, present at CoN, Floyd Dryden, becomes very dense in areas, keep deep water areas in pools if open water habitat is desired
<i>Sparganium angustifolium</i>	Narrow-Leaved Bur-reed	Observed at Nancy Street	aquatic floating	1-3'			nesting, cover, seeds, muskrats		Existed in Nancy Street Pond so it is tolerant of iron		present at Nancy Street Pond prior to filling
<b>Marsh</b>											
<i>Caltha palustris</i>	Yellow Marsh Marigold	Book	wet areas with slow running water	variable	divide rootball	seed direct sow in fall		attractive flower			limited survival at CoN
<i>Carex mertensii</i>	Mertens's Sedge	Patti Krosse	upland, more dry conditions, in transition zone	4'	one of the easiest types of carex to transplant	yes		attractive colorful, large spikes	dense root system may hold more iron	Carex more difficult to dig roots	germinates easily, some found in CoN, planted in Kingfisher Pond, growing very well in low saturated soil, but also growing on wet slopes.
<i>Carex sitchensis</i>	Sitka Sedge	Observed at CoN Wetland	emergent	1-5'	yes	yes	excellent waterfowl habitat		dense root system may hold more iron	hard to dig up because of root system	transplanted into CoN, excellent survival rate
<i>Carex stipata</i>	Sawbeak Sedge	Observed at Kingfisher Pond	marsh and bog	1-3'		yes		attractive seed head	dense root system may hold more iron		planted in Kingfisher Pond (seed), found only a few plants, did not do well
<i>Eleocharis palustris</i>	Spike Rush	Observed at Floyd Dryden Wetland	in shallow standing water, 1-2"	8-24"				attractive head			spread very well in Floyd Dryden Pond and has an attractive head and reddish hue to the stems
<i>Equisetum</i>	Horsetail sp.	Patti Krosse	aquatic to semi-aquatic		yes				the roots are small and probably do not trap much iron, roots do not hold much soil	Has shown invasive tendencies in the CoN wetland	probably easy to transplant some rhizomes, excellent survival rate in CoN( dominates wetland-maybe too aggressive), also abundant in Floyd Dryden
<i>Hordeum brachyantherum</i>	Meadow Barley	Observed at Kingfisher Pond	moist soils	3'		yes	food for blacktail deer			Primarily a maritime species, along beaches and meadows	planted in Kingfisher Pond (seed), found only one plant

Scientific Name	Common Name	Recommendation by	Water Level	Height	Transplant Potential	Seed Potential	Wildlife Benefits	Human Benefits	Iron phytoremediation	Liabilities	Other Issues
Juncus effusus	Common Rush	Patti Krosse	some water-a little drier, gravelly disturbed land	1-4'	Difficult	yes		less attractive, smaller			germinates easily
Juncus mertensianus	Merten's Rush	Observed at Kingfisher Pond	marsh and bog	1'		yes		attractive seed head			planted in Kingfisher Pond (seed), growing in saturated soil
Lysichiton americanum	Skunk Cabbage	Observed at CoN, Ed Buyarski	wet edges of water	1-4'	thick root, need to get down deep to dig it out	yes, direct sow in fall	food for deer, bear, and gnats	attractive flower, color		Shady, forested areas	present at edges of CoN
Menyanthes trifoliata	Buckbean	Patti Krosse	aquatic to semi-aquatic	1'	easy to dig up but difficult to establish in soil	yes	fruit is food for flies, beetles, bees, and birds	attractive flower		rhizomes	planted in past with water around it at all times, creeping rhizomes should be separated in fall or early spring. Transplanted into Floyd Dryden wetland, has spread and is doing well there
Scirpus Microcarpus	Small-Leaf Bulrush	Patti Krosse, Dave Maddix	water with a gradient	4'	very easy to dig roots and transplant successfully	yes	nesting, cover, seeds	attractive seed heads, medium height	root uptake potential		some bulrush present in CoN, believed to be this type, planted in Kingfisher Pond. It is doing very well and has spread
<b>Wet Meadow</b>											
Aconitum delphinifolium	Monkshood	Book	wet meadow, streambanks	3'				attractive flowers		poisonous	needs the drier upslope of wet meadow, often found at higher elevations
Aquilegia formosa	Columbine	Ed Buyarski	wet meadow, streambanks, often in rocky areas	2'	yes	yes	food for hummingbirds, cover for nesting species	attractive flower			prefers drier areas, well-drained, Ed Buyarski says seeding works very well
Calamagrostis canadensis	Bluejoint Reedgrass	Book, Dave Maddix	wet meadows and well-drained uplands	3'	yes with sprigs	limited, grassroots or sprigging plugs	bird seed, nesting, cover for small mammals		dense fibrous root system, slightly rhizomatous		forms overhanging banks, aggressive colonizer in disturbed areas
Deschampsia cespitosa ssp. beringensis	Tufted Hairgrass	Book	moist soils	1-4'		yes, but high demand	low to moderate fishery and habitat value			Must be careful with seed, none being collected in SE AK. DNA issues with new varieties.	adaptable to many conditions, tufted growth form, seeded in Kingfisher Pond did well from low saturated locations moving up on wet slopes
Dodecatheon pulchellum	Shooting Star	Patti Krosse, Ed Buyarski	moist soil but not standing water	1-1.5'	very easy	difficult, needs to be wet and cold through winter		attractive flower			challenging to start from seed



Scientific Name	Common Name	Recommendation by	Water Level	Height	Transplant Potential	Seed Potential	Wildlife Benefits	Human Benefits	Iron phytoremediation	Liabilities	Other Issues
Eriophorum angustifolium	Narrow-Leaved Cotton Grass	Book	wet, moist soil	2'				attractive seed head		rhizomes	
Festuca rubra	Red Fescue	Book	moist to well-drained	6"-40"		yes	low habitat and fishery value	reddish hue			very common in Alaska in low elevation meadows and mountain meadows, easy to seed, used for agriculture, horticulture, lawns, tolerates flooding
Fritillaria camschatcensis	Chocolate Lily	Patti Krosse	moist soil but not standing water	2.5'	Patti Krosse says it is very easy, and they take well (bulb form)			attractive flower			
Iris Setosa	Wild Flag	Book	moist soil	1-3'	easy			attractive flowers			Rhizomes can be divided and gathered in spring or in fall in mild areas
Lupinus nootkatensis	Nootka Lupine	Ed Buyarski	moist soils	2-3'	very difficult to transplant because of extensive root system	yes-gather in pods, dry out pods so they pop and capture the seeds	food for hummingbirds, cover for nesting species	attractive flowers		Needs mineral soil, likes gravel, well-drained	Fixes nitrogen, volunteered at Kingfisher Pond, seeded areas at Floyd Dryden did not take well, only a few plants
Rubus spectabilis	Salmonberry	Book	wet areas	3-9'	dig up rhizomes with many root off shoots, fairly easy		berries good for food	attractive flowers and berries, good screening		attracts bear	
Valeriana sitchensis	Sitka Valerian	Book	moist soil	1-3'				attractive flowers			
Viola palustris	Marsh Violet	Ed Buyarski	saturated soils	low	yes, easy			attractive flowers			
<b>Tree/Shrub</b>											
Acer glabrum	Douglas Maple		floodplain, moist, into uplands	30'	Seed, transplant, softwood cutting	yes	birds eat seeds, cover	attractive fall foliage, yellow-crimson		found mostly in Juneau on rocky coast	
Alnus rubra	Red Alder	Book	wet soils	75'	Hedge layer, transplant, seed, hardwood cutting	yes	food, cover				nitrogen fixing, good on steep slopes
Alnus viridus (Alnus sinuata)	Sitka Alder	Book	wet soils	18'	Hedge layer, transplant, seed, hardwood cutting	yes	food, cover				nitrogen fixing, longpointed teeth of two sizes
Aruncus dioicus	Goat's Beard	Observed at Kingfisher Pond	wet soils to dry uplands	3-8'	yes	yes					Planted in Kingfisher Pond (seed), no mature plants found

Scientific Name	Common Name	Recommendation by	Water Level	Height	Transplant Potential	Seed Potential	Wildlife Benefits	Human Benefits	Iron phytoremediation	Liabilities	Other Issues
<i>Cornus stolonifera</i>	Red Osier Dogwood	Book	moist soils	3-18'	dormant cutting, live stakes, bundles, brush layer, hedge layering, rooted cuttings, transplants, seed	yes	berries provide winter food for deer	attractive white flowers, berries, and red twigs			2-4 specimens planted in Kingfisher Pond, looks like the original shoots died, but root base survived and is sending up new shoots.
<i>Picea sitchensis</i>	Sitka Spruce	Book	wet soils to dry uplands	200'	transplant, seed	yes	birds eat seed, habitat, winter nesting	evergreen, good screen			
<i>Populus balsamifera</i>	Black Cottonwood	Book	water edge	150'	dormant cuttings, live stakes, bundles, brush layer, hedge layering, rooted cuttings, transplants, seed	yes	birds eat seed, habitat				
<i>Salix barclayi</i>	Barclay's Willow	Ellen Anderson	water edge	6-8'		yes	habitat				often has 'willow roses' at end of twigs from deformed leaves and insects
<i>Salix sitchensis</i>	Sitka Willow	Book	water edge	3-24'	dormant cutting, live stakes, bundles, brush layer, live stiltation, hedge layering, rooted cuttings, transplants, seed	yes	habitat				
<i>Spirea douglasii</i>	Hardhack Steeplebush	Observed at Kingfisher Pond	wet soils							Juneau is north of its zone	Seeded in Kingfisher Pond, no plants found.
<i>Tsuga heterophylla</i>	Western Hemlock		wet soils	180'	transplant, seed	yes	habitat	evergreen, good screen			needs significant organic content on site to grow, does not do well in recently deglaciated areas, shade tolerant
<i>Viburnum edule</i>	Highbush Cranberry	Observed at Nancy Street in uplands	wet soils and streambanks to dry uplands	5-8'	cuttings possible		berries	attractive and edible berries			Ed Buyarski says its easy to take cuttings, similar to willow
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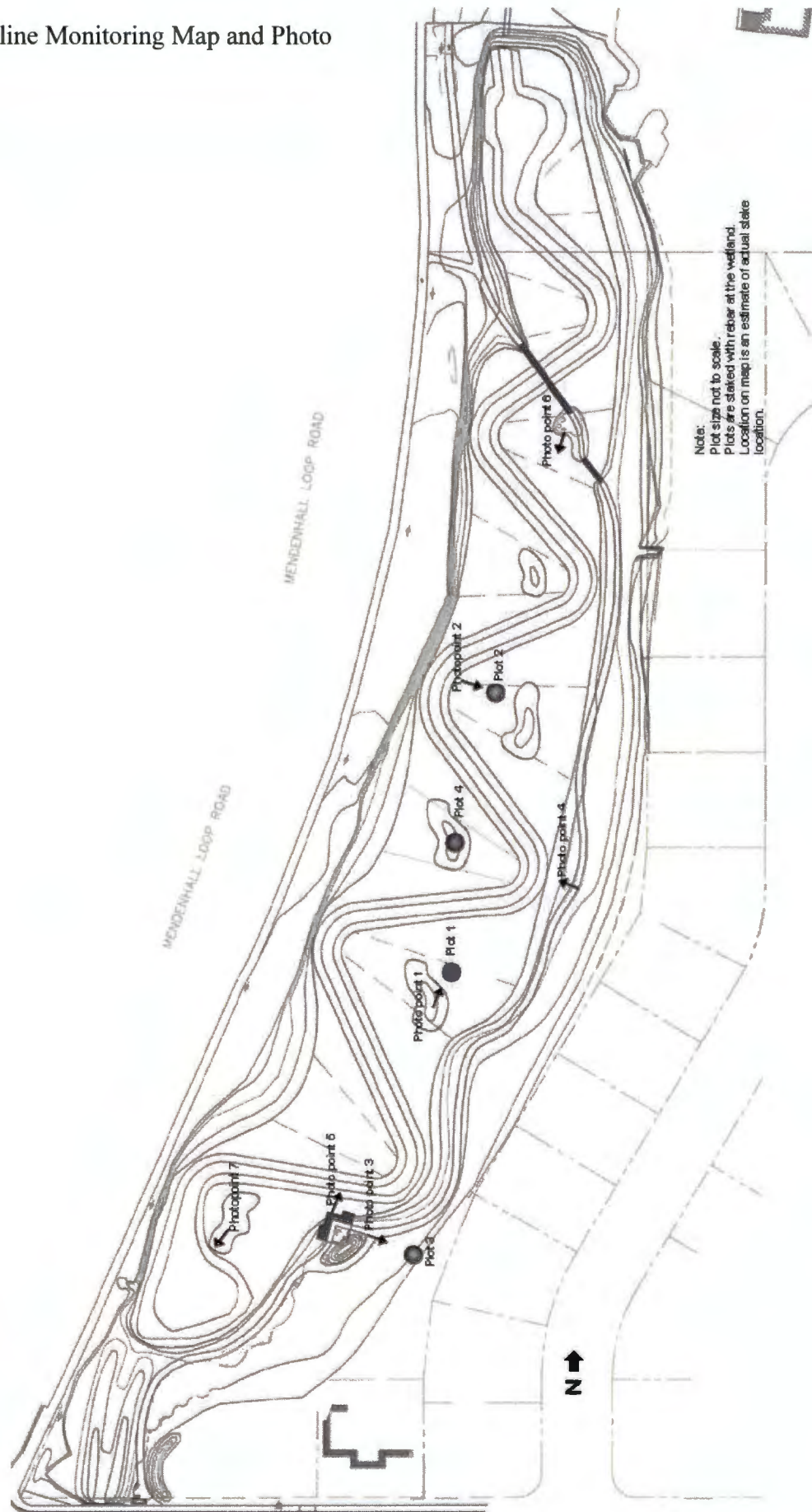


**Appendix 2a. Baseline Monitoring Data**  
October 2006

Sample Plot	Dominant Species	Common Name	Coverage (%)	Density (number count of species)	Standing water (in)
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

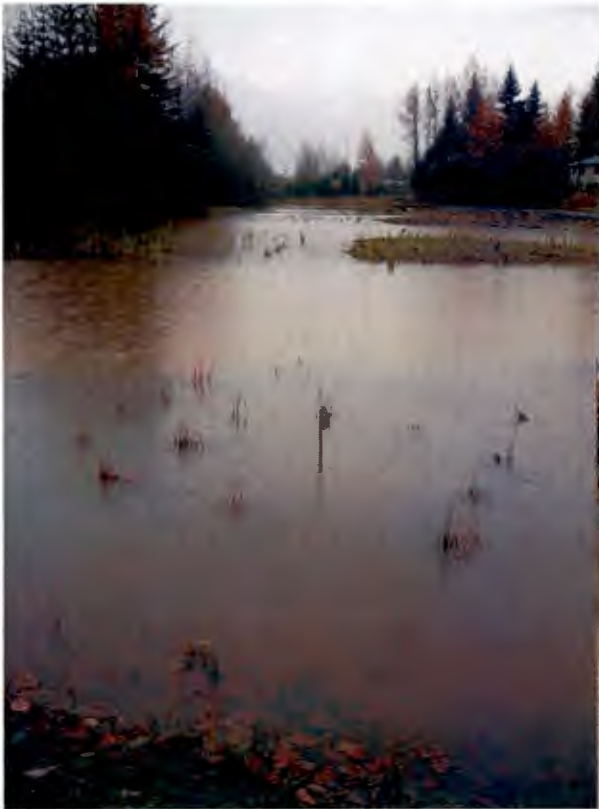


Photo point 1



Photo point 2



Photo point 3



Photo point 4



Photo point 5



Photo point 6



Photo point 7





### Appendix 3A. Budget - CBJ Cost Benefit for New High School Project

<b>Option 1: Typical Cost for Filling at Lemon Creek</b>					
	<b>Price</b>	<b>per Unit</b>	<b>Quantity</b>	<b>Unit</b>	<b>Cost</b>
<b><i>Filling Lemon Creek</i></b> <b><i>52,000 cy</i></b>					
tipping fee	\$2.50	cy	52,000	cy	\$130,000
trucking fee	\$68	load (8 cy)	6,500	loads	\$442,000
				<b>Total Cost for Lemon Creek Filling</b>	<b>\$572,000</b>
<b>Option 2: Nancy Street Wetland Filling</b>					
	<b>Price</b>	<b>per Unit</b>	<b>Quantity</b>	<b>Unit</b>	<b>Cost</b>
<b><i>Filling Nancy Street</i></b> <b><i>52,000 cy</i></b>					
tipping fee	\$1	cy	52,000	cy	\$52,000
trucking fee	\$20	load (8 cy)	6,500	loads	\$130,000
				<b>Total Cost for Nancy Street Filling</b>	<b>\$182,000</b>
				Total Cost for Lemon Creek Filling	\$572,000
				Total Cost for Nancy Street Filling	-\$182,000
				CBJ cost of land purchase of Nancy Street Wetland	-\$137,000
				<b>Savings for CBJ after land purchase</b>	<b>\$253,000</b>

The City and Borough of Juneau saved \$253,000 by purchasing, filling and enhancing the Nancy Street Wetland instead of following the following the typical process of fill disposal at Lemon Creek. The reasons for the savings include:

1. The distance from the construction site to the Nancy Street Wetland is approximately 3 miles shorter than the distance to the Lemon Creek disposal site. This reduces fuel and transportation costs.
2. The CBJ owned the disposal property and could reduce the tipping fees considerably, thereby saving the project money.
3. The process of enhancing the Nancy Street Wetland was funded entirely by the U.S. Fish & Wildlife Service, the Natural Resource Conservation Service, and other grants and donations. The involvement of the resource agencies at all stages of planning, design and construction facilitated the filling and enhancement process. See Appendix 3B for contribution details.

### Appendix 3B. Budget - Contributions

	Entity	Program	Task	Amount
<b>1.</b>	<b>Land Purchase</b>			
	CBJ	Street Sales Tax	Land Purchase	\$137,000
			<b>Total</b>	<b>\$137,000</b>
<b>2.</b>	<b>Earthwork</b>			
	USFWS	Partners for Fish and Wildlife Program	Intern	\$9,000
			Earthwork	\$31,000
	NRCS	Wildlife Habitat Improvement Program	Fill placement and rough grading	\$75,000
			<b>Total</b>	<b>\$115,000</b>
<b>3.</b>	<b>Planting, Final Grading, Outlet Channel and Control Structure</b>			
	USFWS	Partners for Fish and Wildlife Program	Outlet Design, Final Grading	\$45,000
			SAGA-FWS Contract - Reveg	\$26,800
			Intern	\$10,000
	NRCS	Wildlife Habitat Improvement Program	Fish passage channel	\$6,000
			Structure for water control	\$3,750
			Final grading, topsoil placement, planting	\$42,000
	Full Circle Farms	Donation-Cash	Plant Materials	\$5,000
	Full Circle Farms	Donation-Labor	Collection and Planting	\$5,600
	Full Circle Farms	Donation-In Kind	Plant Storage	\$3,000
	Duran Construction Co.	Third Party EPA Mitigation Compliance	Topsoil Delivery, 5500cy	\$30,000
			<b>Total</b>	<b>\$177,150</b>
<b>4.</b>	<b>Trail Construction</b>			
	DNR	Recreational Trails Grant	Trail materials, construction	\$46,746
	Glacier State Contractors	Private Donor	Trail grading and gravel	\$14,000
	Juneau Docks and Harbors	Donation- In Kind	Bridge and Delivery	\$14,900
			<b>Total</b>	<b>\$75,646</b>
			<b>GRAND TOTAL</b>	<b>\$504,796</b>



## Timeline for Purchase, Filling and Enhancement

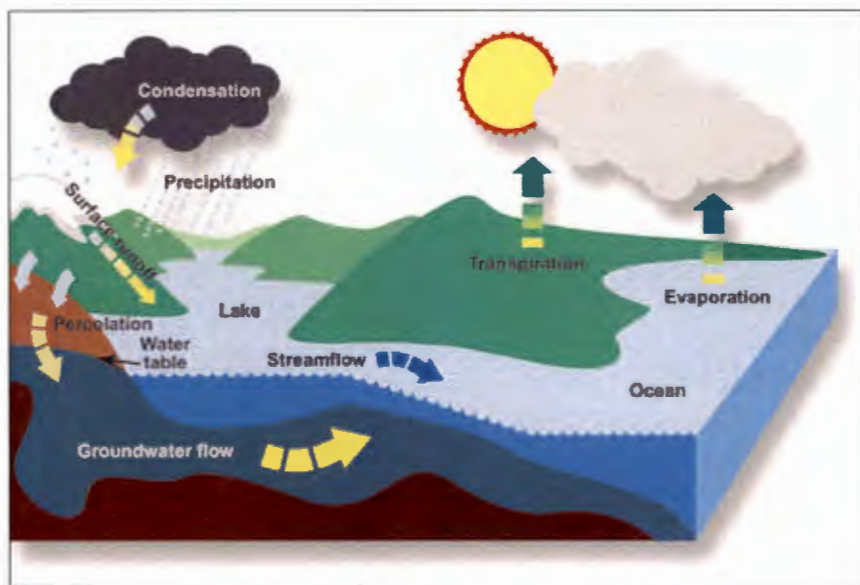
	2005															2006				
	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
Land Purchase																				
Planning and Design for Filling																				
Planning and Design for Revegetation																				
Earthwork and Filling																				
Outlet Channel and Control Structure																				
Planting																				
Trail Construction																				

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## GROUNDWATER IN THE AGGREGATE INDUSTRY

*Groundwater is a renewable resource that is in constant motion as part of the hydrologic cycle. Above-water pits and quarries have little or no effect on water levels or the flow of groundwater.*





## What is Groundwater?

Just as the name implies, groundwater is water contained in the pores and fissures of the earth. Groundwater is a renewable resource. It is in constant motion, part of the hydrologic cycle (see Hydrologic Cycle on the cover page). Rainfall and snowmelt infiltrate into the earth to recharge groundwater, which then flows as baseflow into streams and lakes. Evaporation from open water, and transpiration from plants, returns water to the atmosphere to complete the cycle.

A common misconception is that groundwater flows in underground rivers and lakes like surface water. Instead, groundwater seeps very slowly through the pore spaces and small fissures in the soil and rock. Materials such as clay have a low permeability, and hence very slow groundwater flow, while sand and gravel, or highly fractured rock, have high permeability and permit groundwater to flow faster. These more permeable layers are called aquifers.

The water table is the depth at which the soils or rock become completely saturated with groundwater. If a hole were dug, and left to stand for a while for groundwater to seep in, the water level in the hole would represent the water table. The water table elevation is not static, though, and it can fluctuate in different seasons and from year-to-year, depending on the amount of recharge. Natural depressions can intersect the water table to form lakes, ponds and wetlands.

## Water Wells

Groundwater is a critical resource in Ontario - nearly one quarter of us rely on wells for our water supply. Some of these are municipal wells serving urban communities, but the vast majority are private water wells, mainly in the rural parts of the province. Two common types of wells are shallow dug wells which draw water from the water table, and bored or drilled wells which draw water from deeper aquifers.

The *Ontario Water Resources Act* and the *Environmental Protection Act* both serve to protect the quality and quantity of groundwater. They are administered by the Ontario Ministry of the Environment, which will respond to public complaints regarding interference with water wells. The Ministry has several excellent publications available to

### Fact Sheet

#### Groundwater at Pits and Quarries

- Groundwater is a renewable resource.
- Water wells are protected under provincial legislation.
- Above-water pits and quarries can have a beneficial effect on groundwater and aquatic resources.
- Below-water pits and quarries can be operated without significant groundwater impacts if they are carefully designed and operated.
- Permits to Take Water ensure that aggregate wash plants do not harm water resources.

*Aggregate extraction and processing is a clean industry that does not provide groundwater contaminants.*

homeowners on subjects including proper water well construction and maintenance, protecting water quality in wells and managing water shortages (1-800-565-4923 or [www.ene.gov.on.ca](http://www.ene.gov.on.ca)).

Wells and their associated equipment require ongoing maintenance. Even with the best maintenance, though, they still tend to degrade naturally over a period of years, through mechanical wear and clogging of the well screen, pump and pipes, .

## Can Pits and Quarries Affect the Flow of Groundwater?

The answer depends on the type of pit or quarry.

### Above-Water Pits and Quarries

Most of Ontario's sand and gravel pits, and a few of its rock quarries, are excavated entirely above the water table. This type of operation has little or no effect on water levels or the flow of groundwater because there is no direct, physical alteration of the water table or any aquifers. Monitoring programs at above-water pits and quarries across Ontario have confirmed that groundwater is unaffected.

In some ways, above-water pits and quarries can actually be beneficial to groundwater. They create a "bowl" that captures and infiltrates all rainfall and snowmelt rather than allowing some of it to run off across the ground surface. A study on the Oak Ridges Moraine documented a number of benefits related to this extra groundwater recharge (Hunter/Raven Beck,

1996). One of the important benefits is to reduce direct run-off to surface water streams and increase cold groundwater baseflow which is critical to fish habitat.

## Below-Water Pits

Below-water pits usually use large excavators or draglines to dredge sand and gravel from the *pit ponds* that form below the water table level. Generally, this type of extraction does not have major impacts because most of the groundwater remains in the pit, or drains back into the pit. This type of pit also captures surface water run-off and promotes more groundwater recharge, but these benefits are offset by the increased evaporation that will occur from the surface of a pit pond. Minor water losses also occur due to residual moisture contained in the aggregate products that are shipped from the site. Finally, the removal of solid sand and gravel particles from below the water table has the effect of temporarily lowering the water level in a pit pond (imagine removing a rock from a bucket of water).

The water surface in very large below-water pit ponds will stabilize at a uniform level, whereas the groundwater table before extraction may have been irregular or sloping. Therefore, the water table around the pit will have to “adjust” to the water level in the pit pond, possibly resulting in slightly different groundwater flow patterns. Fortunately, there is a simple solution where this may be a problem – digging several smaller pit ponds rather than one large pond (Ostrander *et al.*, 1998).

When all of these factors are combined, the net effects of below-water extraction are normally minor and very localized. However, in certain circumstances they could still be significant if there are sensitive features such as wetlands or shallow wells in close proximity. As a result, a detailed and careful hydrogeological study is necessary when licencing this type of pit (Ministry of Natural Resources, 1997), and mitigation (solutions) to any negative impacts will be required. An ongoing groundwater monitoring program may be required.

## Below-Water Quarries

Most quarries that extract from below the water table pump water out of the excavation so that the work of blasting and recovering the bedrock can be done on a dry floor. *Dewatering* usually does affect groundwater levels and flow patterns around the site, since it artificially lowers the water table to at least the base of the quarry. Hydrogeologists call the area around the quarry that is affected by the dewatering the *drawdown cone* or the *radius of influence*. Wells, streams, wetlands, or other sensitive features within

this area must be carefully studied to predict the impacts and devise mitigation measures before the quarry can be licenced (Ministry of Natural Resources, 1997) and a groundwater monitoring program will normally be required.

There are many locations in Ontario where below-water quarries are successfully operated while sensitive water uses continue nearby – it depends very much on the specific hydrogeological setting. Recently, some innovative technologies have been introduced in Ontario to lessen the effects of quarry dewatering, such as pumping the water from the quarry back into the groundwater system around the quarry to artificially recharge the water table. This has so far proven to be quite successful (Gartner Lee Limited, 2001).

## Other Water Takings

Pits and quarries have uses for water, similar to other businesses, such as supplying offices and shops with drinking water, watering lawns and gardens, etc., but these tend to be relatively minor. Most types of aggregate processing, such as crushing and screening, are dry operations and do not require water supply.

However, to minimize dust (which is a byproduct of excavation in a pit or quarry) spray water is used on internal haul roads, processing equipment, stockpiles and trucks.

One exception is aggregate washing plants, which are used at some sites, and do require relatively large quantities of water. Most plants recycle wash water through a “closed loop” series of holding ponds and settling ponds (i.e., the water is re-circulated, with no off-site discharge), so that the amount of water actually consumed in the process is usually less than about 10%. This *make-up water* normally comes from local groundwater or surface water sources. A common configuration would be to have a well that would be used occasionally during the production season to “top up” the ponds.

These water takings are regulated separately from the pit licence under the *Ontario Water Resources Act*, and controlled through Permits to Take Water. The applications and related hydrogeological studies are carefully reviewed by the Ministry of the Environment, other government agencies, and the interested public through the Environmental Bill of Rights process to ensure there will be no unacceptable impacts from these water takings, before the permit is issued.



## GROUNDWATER IN THE AGGREGATE INDUSTRY

### Can a Pit or Quarry Contaminate Groundwater?

It surprises some people to learn that aggregate extraction is a clean industry. Processing aggregates is a purely mechanical process of crushing, screening, blending, and sometimes washing (with water), without the need for chemicals. At most sites, fuels and lubricants for the equipment are the only potential sources of groundwater contamination, and these are closely regulated under the *Technical Standards and Safety Act*. A spills contingency plan is a standard condition of every new aggregate licence.

Bacteriological contamination of the type responsible for the Walkerton tragedy comes from human and animal wastes. Aggregate extraction and processing is not a source of this type of contamination.

As a result, water quality in and around pits and quarries is not normally an issue. This was confirmed through a study in 1989 as part of the Ontario government's MISA program, where monitoring at a selected number of pits and quarries found good water quality, with only sporadic traces of organic compounds at some sites that might indicate the use of petroleum products (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](http://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.
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- 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 Pre-regulation 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



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January 17, 2022

Mr. Ed Martin III, President  
Kenai Peninsula Aggregate and Contractors Association  
Via email: Kpac ([kpacassocoation@yahoo.c0m](mailto:kpacassocoation@yahoo.c0m))

Subject: Comments on KPB proposed material site ordinance amendments

As requested, I have reviewed the ordinance proposed to amend KPB 21.25 and 21.50.055 regarding material site permits, applications, conditions and procedures and offer the following comments, observations and suggestions. These comments are provided pro bono as a courtesy to your organization as well as to the Kenai Peninsula Borough and its residents.

I have been retired, as a principal partner with the engineering firm of Wince-Corthell-Bryson in Kenai, for the past three years and therefore have no further interest in contracts or projects within the Borough. I have been a Kenai Peninsula resident since childhood when my parents homesteaded the Kasilof area in 1957 and have over 50 years of construction and engineering experience in the central, southcentral and southwestern regions of Alaska.

I have over 40 year's experience in the planning, design, and management of federally funded highway and airport projects where the National Environmental Protection Policy Act (NEPA) procedures are followed to evaluate and mitigate environmental impacts caused by construction and use of the resulting infrastructure.

All this being said I will offer my comments from a engineering prospective and as a good neighbor in the order of the documents you provided.

**Whereas #1and2:** Not clear to me what Climate Change has to do with this ordinance

**Whereas #3:** I assume "other uses" refers to material production. I.e.. Crushing, screening, asphalt and concrete supply.

**Whereas #4:** I agree larger setbacks are not the answer where a material barrier will address impacts off site.

**Whereas #5:** Protecting, maximizing, minimizing is not a very definitive word, perhaps mitigating should be considered.

**Whereas #12:** *Dust, noise, traffic and visual aesthetics appears to me to be the crux of this ongoing debate and as a good neighbor is a reasonable topic. Its how they are reasonably addressed is the issue to me.*

**Whereas #17:** I agree this catchall statement that additional requirements may be required casts uncertainty in the process and should be removed. The permit process should establish the conditions up front.

## SECTION 1. KPB 21.25.030

### 21.25.030. – Definitions

**Permit Area and Haul routes** I think this is a valid issue that should be addressed in the permit process. While I agree all vehicles have the right to use the borough roads, most of the Borough roads are not designed and built to carry high numbers of heavy trucks on a daily basis. Alternate access and/or upgrading existing roads may be something to consider to mitigate damage to existing roads as well as other traffic concerns.

#### 21.29.020 Material extraction and activities requiring a permit

**B. Conditional land use permit (CLUP)** I see no problem with including material processing in with the site plan as crushing and screening operations can be noisy and dusty and can be addressed with effective barrier plans such as earth berms. For the smaller pits processing is not usually not going on so would be a non applicable item on a checklist.

#### 21.29.030 Application Procedure

**9. Site Plan.** The Site plan along with accompanying SWEPP, Traffic, and Environmental mitigation proposals should be prepared or at least reviewed and signed off on by a Alaska registered Civil Engineer. A checklist would be convenient with this process.

**9f. Test Holes.** Perhaps the mining plan should be limited to the depth of test holes with provisions to amend the plan later or utilize a drill rig to bore the test holes.

**9h. Waterbodies and wetlands.** The Borough GIS source provides good planning level information on wetlands. Definitive designations can easily be requested with a two-page application to the local Corp of Engineers office in Soldotna for little to no cost and only takes 2-4 weeks to obtain.

**21.29.040. Standards for sand, gravel or material sites.** This section addresses protecting or minimizing environmental conditions again perhaps mitigating would be an acceptable term. Regarding damage to adjacent properties, I believe that goes with out saying. Any damage to another person's property is protected under state law and pursuable in civil court.

#### 21.29.050. Permit Conditions

**2. Buffer Zone. A)** I don't believe a 50-foot strip of trees affectively buffers adjacent property and ROW from visual, noise or dust impacts. A 10-foot minimum, neatly shaped and seeded, earth berm would affectively mitigate those three impacts and is readily available from site stripping as well as being available for reclamation activities. The buffer should not overlap ROW utility easements as those are dedicated for utility use.

I think it might be a good idea to establish some parameters to be achieves with the buffer such as visibility level which a 10-foot berm achieves. Noise levels which the borough proposes late at 75 decibels should be achievable considering FAA noise standards for airport noise is 65 decibels and easily measured with a decibel meter which I have can loan you. Airborne particulate is a difficult to measure without special equipment so maybe a visible standard could be used.



**4. Water Source Separation b.** I don't believe a few feet of gravel separation to the ground water protects it at all from fuel and oil spills, on the contrary. Minor spills that can be obscured by pit operations can build up over time and steadily leach into the water table not showing up for quite some time and well down gradient resulting in a long term impact.

Dredging operations below water table can be boomed off and if a spill occurs is immediately visible and can be quickly boomed in, skimmed and absorbed.

**5. Excavation in the water table.** Simply dredging into the water table should have little affect on its level or down gradient wells. I agree some horizontal separations is required and would think the 200-foot separation required by ADEC would be sufficient.

If dewatering is proposed, then the following requirements address those impacts .

**6. Waterbodies.** I believe a 100-foot buffer with appropriate SWEPP practices will adequately protect surface water and wetlands.

**11. Hours of Operation.** Over my career I have only been involved with a few double shifting projects and they were on airports well away from residential areas. From what I have observed most operations run about 12 hours a day 5-7 days a week. Perhaps a special use permit could be utilized for unusual working hours.

**17. Sound Level.** The 75 decibel limit may be impossible to meet during initial pit development until the clearing, stripping, berming and the pit is to a depth below grade. Perhaps the permit could allow the 1.5 increase during initial development. This should be achievable during the first season of operation.

The smaller pits (1-2.5 acres) should be exempt from this requiremen, as I don't believe they can ever meet the requirement and they are normally project specific, only operating for a few weeks to a few months.

**19. Ingress and Egress.** Should be addressed in the permit process to assure existing Borough roads are capable of accommodating the increase in heavy truck traffic.

I have no comments on the Decision and Reclamation sections as that is housekeeping between the operators and the Borough in m my mind.

I also think that the final product of this ordinance should be a result of a consensus of the stakeholders and not simply a mater of majority vote rule. In the end a Permit Checklist should be provided that addresses all the impacts, their limits and provides a template for proposed mitigation .

One last observation is that considering how important gravel borrow sites are to the long term development and economics of the Peninsula I think the Borough and State should be encouraged to set aside some suitable land in proximity to the road system but buffered from private holding for land lease or sale. Making land available that is more neighbor friendly would solve not only this current issue but insure the continued growth of our area.

I hope my comments provide some ideas for consideration and wish you and the Borough success with the continued process to address this matter

Sincerely

A handwritten signature in cursive script, reading "Casey Madden". The signature is written in dark ink and is positioned above a horizontal line.

Casey Madden, P.E.  
Alaska Registered Civil Engineer No. 7235



## Broyles, Randi

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**From:** Blankenship, Johni  
**Sent:** Monday, January 24, 2022 10:52 AM  
**To:** Broyles, Randi  
**Subject:** FW: New Public Comment to Assembly Members

### Public comment

**From:** Kenai Peninsula Borough <webmaster@borough.kenai.ak.us>  
**Sent:** Monday, January 24, 2022 10:48 AM  
**To:** BoroughAssembly <Borough-Assembly@kpb.us>; Mayor's Department <MayorDepartmental@kpb.us>  
**Subject:** New Public Comment to Assembly Members

**Your Name:** Joseph Ross

**Your Email:** [smokeross@alaska.net](mailto:smokeross@alaska.net)

**Subject:** Gravel ordinance

### Message:

No other industry in the borough is regulated to the extent that you are considering for our local gravel producers. Where are the regulations for the dirt burner? There was an immense amount of public outcry about it, but no task force was formed by KPB to address it. Homeless shelters? Same deal. Marijuana growers? Crickets. What you are attempting is spot zoning, and will cripple the gravel industry. One item you are considering in the new list of zoning is back up alarms. Will you be making rules about back up alarms for everyone, or just gravel producers? I hear back up alarms from Peak Construction every day. Sometimes even at night. How about the back up alarms on the graders out plowing snow at night?

Need to look @  
18 AAC 80 SOA Drinking  
Water Dept - there are  
some source water provisions  
80.015.

- differentiate Bt major  
and minor extraction operations  
and those in GWT that  
stay above GWT

and are valid for one year. The site development plan may be renewed on an annual basis subject to the planning director's approval.

#### 21.29.020. Material extraction and activities requiring a permit.

- A. *Counter permit.* A counter permit is required for material extraction which disturbs no more than 2.5 cumulative acres and does not enter the water table. Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension.
- B. *Conditional land use permit.* A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. A CLUP is required for materials processing. A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPS and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling. (Material processing occurs on every civil construction jobsite. This is a burden to the public at large to develop their property)

#### 21.29.030. Application procedure.

- A. In order to obtain a counter permit or CLUP, an applicant shall first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application shall include the following items:
  1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
  2. Expected life span of the material site;
  3. A buffer plan consistent with KPB 21.29.050(A)(2);
  4. Reclamation plan consistent with KPB 21.29.060;
  5. The depth of excavation;



6. Type of material to be extracted and type of equipment to be used;
7. Any voluntary permit conditions the applicant proposes. Failure to include a proposed voluntary permit condition in the application does not preclude the applicant from proposing or agreeing to voluntary permit conditions at a later time;
8. Surface water protection measures, if any, for adjacent properties designed by a SWPPP certified individual civil engineer (many of the operators are certified), including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;

DEC Regs  
on "Certified  
Individual"  
may not incl  
Civil Engr

Don't know what this means

9. A site plan and field (verification) prepared by the site operator or a professional surveyor licensed and registered in the State of Alaska, including the following information: (surveyors don't offer this service, nor are qualified)

Should separate  
site plan from other issues  
calling it a "site plan" may  
bring other state requirements  
into play

- a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
- b. Proposed buffers consistent with KPB 21.29.050(A)(2), or alternate buffer plan;
- c. Identification of all encumbrances, including, but not limited to easements;
- d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to the issuance of the material site permit;
- e. Anticipated haul routes;
- f. Location and [DEPTH] elevation of test holes, and depth of groundwater, if encountered between May and December. At least one test hole per ten acres of excavated area is required to be dug. The test holes shall be at least four feet below the proposed depth of excavation; (can't dig that deep many times, if resource is deeper than conventional equipment can dig without stage excavation)
- g. Location of wells of adjacent property owners within 300 feet of the proposed parcel boundary;

may not be enough for  
Public wells  
- separate Private  
From public sources

- h. Location of any water body on the parcel, including the location of any riparian wetland as determined by "Wetland Mapping and Classification of the Kenai Lowland, Alaska" maps created by the Kenai Watershed Forum; (wetland mapping by KWF under contestment and found unreliable)
- [I]. SURFACE WATER PROTECTION MEASURES FOR ADJACENT PROPERTIES, INCLUDING THE USE OF DIVERSION CHANNELS, INTERCEPTION DITCHES, ON-SITE COLLECTION DITCHES, SEDIMENT PONDS AND TRAPS, AND SILT FENCE; PROVIDE DESIGNS FOR SUBSTANTIAL STRUCTURES; INDICATE WHICH STRUCTURES WILL REMAIN AS PERMANENT FEATURES AT THE CONCLUSION OF OPERATIONS, IF ANY;]
- [J]i. Location of any processing areas on parcel, if applicable;
- [K]i. North arrow;
- [L]k. The scale to which the site plan is drawn;
- [M]l. Preparer's name, date and seal; (A site operator may not have a seal)
- [N]m. Field verification shall include staking the boundary of the parcel at sequentially visible intervals. The planning director may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious or staking is unnecessary.

*Separate Site  
Plan From other  
Requirements*

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

#### **21.29.040. Standards for sand, gravel or material sites.**

- A. These material site regulations are intended to protect against (protects against is an absolute term and most of the time is unobtainable) Minimize aquifer disturbance, road damage, physical damage to adjacent properties, dust, and, noise, and visual impacts. (See explanation below) Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:
1. Protects against Minimizes the lowering of water sources serving other properties;

- properties;
2. Protects against Minimizes physical damage to [OTHER] adjacent
  3. [MINIMIZES] Protects against off-site movement of dust;
  4. [MINIMIZES] Protects against noise disturbance to other properties;
  5. [MINIMIZES] Protects against visual impacts of the material site; [AND] (visual impacts implies the taking of visual rights from one citizen and giving to another. I have done extensive research on this and found the KPB just doesn't have the authority. Keeping this language puts the KPB at risk of litigation.)
  6. Provides for alternate post-mining land uses[.];
  7. Protects Minimizes Receiving Waters against adverse effects to fish and wildlife habitat;
  8. Minimizes Protects against traffic impacts; and
  9. Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents. (Possible Zoning)

#### 21.29.050. Permit conditions.

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

1. [PARCEL]Permit boundaries. [ALL BOUNDARIES OF THE SUBJECT PARCEL] The buffers and any easements or right-of-way abutting the proposed permit area shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter. Field verification and staking will require the services of a professional land surveyor or site operator. Stakes shall be in place [AT TIME OF APPLICATION] prior to issuance of the permit. (Many site operators have GPS capability accurate to +/- 1".)

2. BUFFER ZONE. A BUFFER ZONE SHALL BE MAINTAINED AROUND THE EXCAVATION PERIMETER OR PARCEL BOUNDARIES. WHERE AN EASEMENT EXISTS, A BUFFER SHALL NOT OVERLAP THE EASEMENT. UNLESS OTHERWISE CONDITIONED BY THE PLANNING DIRECTOR OR PLANNING COMMISSION.



A. THE BUFFER ZONE SHALL PROVIDE AND RETAIN A BASIC BUFFER OF:

I. 50 FEET OF UNDISTURBED NATURAL VEGETATION, OR

II. A MINIMUM TEN SIX-FOOT EARTHEN BERM WITH AT LEAST A 2:1 SLOPE, OR (THIS 10FT BERM IS CONTINGENT ON THE SETTLEMENT OF THE WATER TABLE ACCESS)

III. A MINIMUM SIX-FOOT FENCE.

B. A 2:1 SLOPE SHALL BE MAINTAINED BETWEEN THE BUFFER ZONE AND EXCAVATION FLOOR ON ALL INACTIVE SITE WALLS. MATERIAL FROM THE AREA DESIGNATED FOR THE 2:1 SLOPE MAY BE REMOVED IF SUITABLE. STABILIZING MATERIAL IS REPLACED WITHIN 90 DAYS FROM THE TIME OF REMOVAL.

C. THE PLANNING COMMISSION OR PLANNING DIRECTOR SHALL DESIGNATE ONE OR A COMBINATION OF THE ABOVE AS IT DEEMS APPROPRIATE. THE VEGETATION AND FENCE SHALL BE OF SUFFICIENT HEIGHT AND DENSITY TO PROVIDE VISUAL AND NOISE SCREENING OF THE PROPOSED USE AS DEEMED APPROPRIATE BY THE PLANNING COMMISSION OR PLANNING DIRECTOR.

D. BUFFERS SHALL NOT CAUSE SURFACE WATER DIVERSION WHICH NEGATIVELY IMPACTS ADJACENT PROPERTIES OR WATER BODIES. SPECIFIC FINDINGS ARE REQUIRED TO ALTER THE BUFFER REQUIREMENTS OF KPB 21.29.050(A)(2)(A) IN ORDER TO MINIMIZE NEGATIVE IMPACTS FROM SURFACE WATER DIVERSION. FOR PURPOSES OF THIS SECTION, SURFACE WATER DIVERSION IS DEFINED AS EROSION, FLOODING, DEHYDRATION OR DRAINING, OR CHANNELING. NOT ALL SURFACE WATER DIVERSION RESULTS IN A NEGATIVE IMPACT.

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

with a  
steeper not steeper  
than 2:1

Comply w/  
18 AAC 70-50A  
Water Quality  
Regulations

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

- a. A buffer area of a maximum of 100 feet shall be established between the area of excavation and the parcel boundaries. The buffer area may include one or more of the following: undisturbed natural vegetation. (Historically, choosing the natural vegetation buffer has almost always ended with both neighbors disappointed. The home owner doesn't realize that the forest isn't very dense and can see and hear the material operation.) a minimum six-foot fence, a minimum six-foot berm or a combination thereof. (The berms are historically the best tool. Does a great job of minimizing the dust and noise, as well as providing a visual screen. A ten-foot berm will add 280% more in size and reclaimable material stored for later use in reclamation.)
- b. A 2:1 slope shall be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 90 30days from the time of removal. (30 days may not be enough time to move the amount of material)
- c. Where an easement exists, a buffer shall not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable. (Basically, stacking buffers)
- d. The buffer area may be reduced where the planning commission or planning director, as applicable, has approved an alternate buffer plan introduced by the applicant. (This is necessary to clarify that the planning commission or director cannot make an alternate plan at will) The alternate buffer plan must consist of natural undisturbed vegetation, or a minimum ten six-foot berm, or a minimum six-foot fence or a combination thereof, consisting of only one option in a single geographical location; (prevents stacking of buffers, and provides consistency in permit requirements) unless the permittee proposes another solution approved by the planning commission or planning director, as applicable, to meet this condition.
- e. The buffer requirements may be waived by the planning commission or planning director, as applicable, where the



topography of the property or the placement of natural barriers makes screening not feasible or unnecessary.

f. There is no requirement to buffer a material site from uses that commence after approval of the permit.

g. When a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required. (Could be a lot cleared years before or an old wildfire site)

3. *Processing.* In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of [OF ADJACENT PROPERTY AT THE TIME] the properties in the vicinity at the time of approval of the permit. (Until vicinity is better defined, we can't consider this)

4. *Water source separation.*

a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.

b. All counter permits shall be issued with a condition which requires that an excavation distance of 15 feet below the seasonal high-water table must be maintained under these conditions:

1. No dewatering is allowed.
2. The bottom of excavation must be 15 feet above the nearest, shallowest private wells intake, within 500 ft of operation.
3. A spill response kit.
4. Operations shall not breach an aquifer-confining layer.

A four-foot vertical separation [FROM] between extraction operations and the seasonal high-water table be maintained. (I have talked with multiple hydrologists and engineers and have come to a conclusion that this is not only possible, but preferable in regard to reclamation, spill response and potential clean up. I will have letters of opinion in favor. The ponds or lakes created will be reclaimed upon existence, provide habitat for wetlands and wildlife, potentially raise property values as lake front property, etc.)

*He above seems conflicting - Allows operator to excav. 15' into GWT but requires a 4' vert separation to GWT?*

*Drinking water source - 700' for public well / source*

*who provides the adjacent well information? How is it obtained? What if adjacent property owner refuses to give that info? well drillers will not provide a log for someone's well who owns a well - especially in a contested situation.*

*see 18 AAC 80.1990(A)*



- c. All CLUPS shall be issued with a condition which requires that a [TWO] four-foot vertical separation [FROM] between extraction operations and the seasonal high-water table be maintained. (Null and void if minimum water table excavation regulation is considered)
- d. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.

5. Excavation in the water table. Excavation in the water table greater than 15 vertical 300 horizontal feet of a water source may be permitted with the approval of the planning commission based on the following: (15 vertical feet is better measurement if minimum water table excavation regulation is considered)

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

6. Waterbodies.

- a. An undisturbed buffer shall be left and no earth material extraction activities shall take place within [100] 200 linear feet from excavation limits and the ordinary high water level

of surface water bodies such as a lake, river, stream, [OR OTHER WATER BODY, INCLUDING] riparian wetlands and mapped floodplains as defined in KPB 21.06. This regulation shall not apply to ponds less than one acre on private land, man-made waterbodies being constructed during the course of the materials extraction activities. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required. (Again, we can not trust the current adopted wetland mapping. It has been found incorrect. Also, we would like to manipulate and possibly enlarge waterbodies within private land. Promoting wetland expansion and environmental habitat.)

- b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.

Containment Areas  
are problematic bk  
they collect water  
that will prob. stain  
a sheep - then what?

7. *Fuel storage.* Fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface. Double wall tanks are also acceptable. (Double wall tanks are an acceptable standard for many other agencies)
8. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads as required by KPB 14.40.175 and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
9. *Subdivision.* Any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit. The planning director may issue a written exemption from the amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a material site and all original permit conditions can be met.
10. *Dust-control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
11. *Hours of operation.* [ROCK CRUSHING EQUIPMENT SHALL NOT BE OPERATED BETWEEN 10:00 P.M. AND 6:00 A.M.]
- a. Processing equipment shall not be operated between 10:00 7:00 p.m. and 6:00 a.m. (Construction season is short and



processing operations are usually job specific. This puts a burden on development at all levels and can extend the length of days on a job that effects public safety.)

- b. The planning commission may grant exceptions to increase the hours of operation and processing based on surrounding land uses, topography, screening the material site from properties in the vicinity and conditions placed on the permit by the planning commission to mitigate the noise, dust and visual impacts caused by the material site.

12. *Reclamation.*

- a. Reclamation shall be consistent with the reclamation plan approved by the planning commission or planning director as appropriate in accord with KPB 21.29.060.
- b. [AS A CONDITION OF ISSUING THE PERMIT, THE APPLICANT SHALL SUBMIT A RECLAMATION PLAN AND POST A BOND TO COVER THE ANTICIPATED RECLAMATION COSTS IN AN AMOUNT TO BE DETERMINED BY THE PLANNING DIRECTOR. THIS BONDING REQUIREMENT SHALL NOT APPLY TO SAND, GRAVEL OR MATERIAL SITES FOR WHICH AN EXEMPTION FROM STATE BOND REQUIREMENTS FOR SMALL OPERATIONS IS APPLICABLE PURSUANT TO AS 27.19.050.] The applicant shall operate the material site consistent with the approved reclamation plan and provide bonding pursuant to 21.29.060(B). This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.

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

or observed by borough personnel will be forwarded to the appropriate agency for enforcement.

14. ~~[VOLUNTARY]~~Volunteered permit conditions. Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission for CLUPs or the planning director for counter permits. Such conditions must be consistent with the standards set forth in KPB 21.29.040(A). Planning commission approval of such conditions shall be contingent upon a finding that the conditions will be in the best interest of the borough and the surrounding property owners. ~~[VOLUNTARY]~~ Volunteered permit conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in ~~[VOLUNTARY]~~ volunteered permit conditions may be proposed ~~[AT]~~ by permit ~~[RENEWAL OR AMENDMENT]~~ modification.
15. *Signage.* For permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access, whichever is more visible. Sign dimensions shall be no more than 15" by 15" and must contain the following information: the phrase "Permitted Material Site" along with the permittee's business name and a contact phone number.
16. Appeal. No clearing of vegetation shall occur within the 50 100-foot maximum buffer area from the permit boundary nor shall the permit be issued or operable until the deadline for the appeal, pursuant to KPB 21.20, has expired. ~~(No need for this regulation as the natural vegetative buffer is not and should not be a best choice. If the need for additional buffing is required, the ten foot berm will suffice.)~~
17. Sound level.
  - a. No sound resulting from the materials extraction activities shall create a sound level, when measured at or within the property boundary of the adjacent land, that exceeds 75 dB(A).
  - b. For any sound that is of short duration between the hours of 7 a.m. and 7 p.m. the levels may be increased by:
    - i. Five dB(A) for a total of 15 minutes in any one hour; or
    - ii. Ten dB(A) for a total of five minutes in any hour; or
    - iii. Fifteen dB(A) for a total of one and one-half minutes in any one-hour period.



- c. At its discretion, the planning commission or planning director, as applicable, may reduce or waive the sound level requirements on any or all property boundaries. Sound level requirements shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
  - d. Mandatory condition KPB 21.29.050(A)(17) shall expire 365 days from adoption of KPB 21.29.050(A)(17) unless extended or modified by the assembly.  
(There is no science behind this. Almost every instance, it will be impossible to achieve with OSHA and MSHA standards. Also, will be further managed by the introduction of larger 10ft berms)
18. Reverse signal alarms. Reverse signal alarms, used at the material site on loaders, excavators, and other earthmoving equipment may shall be more technically advanced devices; such as, a multi-frequency "white noise" alarms rather than the common, single (high-pitch) tone alarms. At its discretion, the planning commission or planning director, as applicable, may waive this requirement or a portion of this requirement. The waiver of this requirement shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit. (May is the proper term and gives flexibility)
19. Ingress and egress. The planning commission or planning director may determine the points of ingress and egress for the material site. The permittee is not required to construct haul routes outside the parcel boundaries of the material site. Driveway authorization must be acquired, from either the state through an "Approval to Construct" or a borough road service area as appropriate, prior to issuance of a material site permit when accessing a public right-of-way. (This can only be instituted with strict standards and limitations of the planning commissions discretionary power. As written, it gives the planning commission discretion at will in an area of construction that they don't have the expertise.)
20. Dust suppression. Dust suppression may shall be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on haul routes within property boundaries. Based on surrounding land uses the planning commission or planning director, as applicable, may waive or reduce the requirement for dust suppression on haul routes within property boundaries. (As explained before)

21. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8) must be approved by a licensed civil engineer or SWPPP certified individual.

22. Groundwater elevation. All material sites must maintain one monitoring tube per ten acres of excavated area four feet below the proposed excavation. (This will be unnecessary as the material site will be digging in the water table or unable to reach it and not effecting its formation.)

23. Setback. Material site excavation areas shall be 250-feet from the property boundaries of any local option zoning district, existing public school ground, private school ground, college campus, child care facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation shall be included in the 250-foot setback. At the time of application. (This gives consistency in the regulation)

#### 21.29.055. Decision.

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

#### 21.29.060. Reclamation plan.

- A. All material site permit applications require an overall reclamation plan along with a five-year reclamation plan. A site plan for reclamation shall be required including a scaled drawing with finished contours. A five-year reclamation plan must be submitted with a permit extension request. (Why the need for a five-year reclamation plan? As site operators, we cannot foresee the market in a five-year span, therefore, cannot provide an accurate plan for five years.)
- B. The applicant may shall revegetate with a non-invasive plant species and reclaim all disturbed land (There are many ways to reclamation. This limits it to one method) [UPON EXHAUSTING THE MATERIAL ON-SITE, OR WITHIN A

What's the purpose of the monitoring well? Is it (are they?) down gradient? Testing?





To whom it may concern:

The Kenai Peninsula Aggregate and Contractors Association does not support ordinance 2021-41. We feel that it is flawed in many ways, and in some respects, impossible to follow.

The lack of all information or slanted information in the whereas is misleading. The use of Changing Climate has nothing to do with material extraction nor is scientifically proven without a doubt. The lack of mention that this exact document other than its previous designation of 2019-30 mayor substitute, was voted down, reconsidered, then voted down again, is important to note.

We feel the creation of this document was not done in a fair, well educated, and well represented way. The Material Site Work Group was formed using 8 members, and only 2 from the industry it would regulate. A 6 to 2 vote was all too common, as the majority of its members had limited experience if any at all. This ultimately created an ordinance that no one could support. That being said, we feel if such document should be created, this ordinance should not be considered as a guide whatsoever, as it would be counterproductive. Our reasoning is stated below.

The use of aesthetics, view, unsightliness, or any term that insinuates regulating view shed rights is not a power afforded to the KPB. After many hours of research, we have found that there are only 3 ways view shed rights have been regulated or transferred in the USA. The federal government regulates view shed on federal land containing historical sites and parks. Local first-class governments have zoning power. Some local governments have regulated through zoning, view shed rights over large zones containing all parcels of land within. There is no precedent of any government regulating view shed on singular parcels of land pertaining to one industry. The KPB is a second-class government with no zoning power. Last, we have found some instances where view shed rights have been transferred in the private sector through purchase.

This ordinance was founded by its initial goals. Those goals contained view shed language and concerns. Therefore, the ordinance was given wrong direction from its inception. All language concerning view must be stricken from its contents.

The definition of "disturbed" should not include "stockpiles" as it is used in 21.29.060 (b). The intent of reclamation is to put the land back to a suitable condition after operations have ceased. If operations have truly ceased, and the land has been put back to a suitable condition, there will be no stockpiles.

Eliminating the term "exhausted" was counterproductive in the intent of the original use of the land.

The definition of "haul route" and its use in the ordinance is unfairly singling out one industry as many others haul commercially in the KPB. Also, we are already regulated by KPB 21.29.050 (8), KPB 14.40.175, and subject to KPB 14.40.

The definition of "vicinity" is too broad and can give other residents not effected by operations by geographic and topographic locations the ability to diminish operations such as processing. Adjacent was a better term used.

21.29.030 (8) is already regulated by the federal government through SWPPP plans. This is unneeded, and a further burden to the KPB and the operator.

21.29.030 (9) (f) the timeframe from May to December does not coincide with construction season. Many bids come out before May for the upcoming season and a contractor will have to speculate and possibly apply for a permit before bidding a project. This will only burden the public to unnecessary costs and safety by denying the opportunity to obtain a close source of material.

21.29.040 (a) (3,4,5) the definition of “minimizes” and the inclusion of “protects against” is an unobtainable condition. “Minimizes” allowed the operator the ability to mitigate the situation. “Protects against” insinuates the absolute disbursements of, and is an impossible and unfair condition. It also contradicts other conditions levied in this ordinance. (3) is impossible as written, as dust moves naturally. It is not only unfair, because everyone creates dust, such as a parking lot on a windy day, or a homeowner mowing their lawn, but impossible to comply to because one particle across the property line defies the law. (4) is already regulated by the federal government agency MSHA. This is a further burden on the KPB and the operator. (5) is unlawful for the KPB to regulate as it insinuates the taking of view shed rights and the KPB is a second-class government with no zoning power.

(8) also includes the term “protects against” and is an impossible condition. As soon as an operator uses a public road to travel, they will impact traffic just by their presence. We have the right to travel by federal law, 5th amendment to the U.S. constitution.

21.29.050 (2) we feel the changes in the buffer zones were negotiated on incorrect information by KPB staff. Our representatives were misinformed as well as the rest of the MSWG and public as to the current distance and application of buffers conditioned to the applicant. As we read the current law, you may impose a combination of buffer requirements on an application, but only one in any geographical location. “Stacking” is prohibited. For instance, you may have a 50ft natural vegetative buffer on the north border and a minimum 6ft fence on the west, and a minimum 6ft berm on the east, but not all on one border. The word “or” in (2) (a) supports that. The KPB has already misused this law by asking for or requiring operators to comply with “stacking”. We feel the MSWG and the public did not receive the correct data to make an informed decision or to give public comment. A 100ft maximum buffer is an unnecessary burden to the applicant as it locks up a rare and high demanded commodity.

(2) (b) is in conflict with other conditions such as noise and undisturbed natural vegetation. How can we remove and replace material near or on the border of our site with heavy machinery if we cannot make noise, dust, or disturb vegetation?

(3) the use of “vicinity” is too broad. A property over a large hill, across a forest, on another road, may affect the use of processing even though they cannot see, hear, or be troubled in any way.

(4) we feel that the changes from 2 vertical ft. to 4ft is unnecessary. We don’t feel the MSWG was really given the option to go the other way and scientific data to make an informed decision. To our knowledge, there has been no conflict proven in the KPB with a 2ft separation. Many sites in Alaska mine in the water table. Some right here in the KPB. There is no precedent to support the taking of 2ft of resources away from an operator. We feel this section could have been abolished in its entirety and section (5) is sufficient.

(6) Again, we feel this is a product of lack of scientific data and there is no precedence to support the taking of 100ft of horizontal distance. State mining law is very different and allows for a much closer distance.

(17) this is also conceived by lack of scientific knowledge. Also, we are already regulated by the federal agency MSHA. This should be abolished in its entirety.

(18) this is unfairly enforcing a regulation on one industry. The KPB doesn't want to get involved in the type of safety equipment used. If an accident occurred, the KPB could be held liable. Also, we cannot control other possible members of the industry from outside the KPB who may not have these devices and come here to work for the season.

(19) this is unfair to the operator as we have the right to travel on any road. The possible burden to an operator could be massive because of topography and diminish the opportunity to access resources.

(20) this is unfair to the industry. We already supply dust suppression as good neighbors and stewards of the land. This is singling out one industry as almost all industries on the KPB are involved with a heavy truck creating dust on a road at some point. School busses create the same dust.

(21) Again, already regulated by federal SWPPP plans.

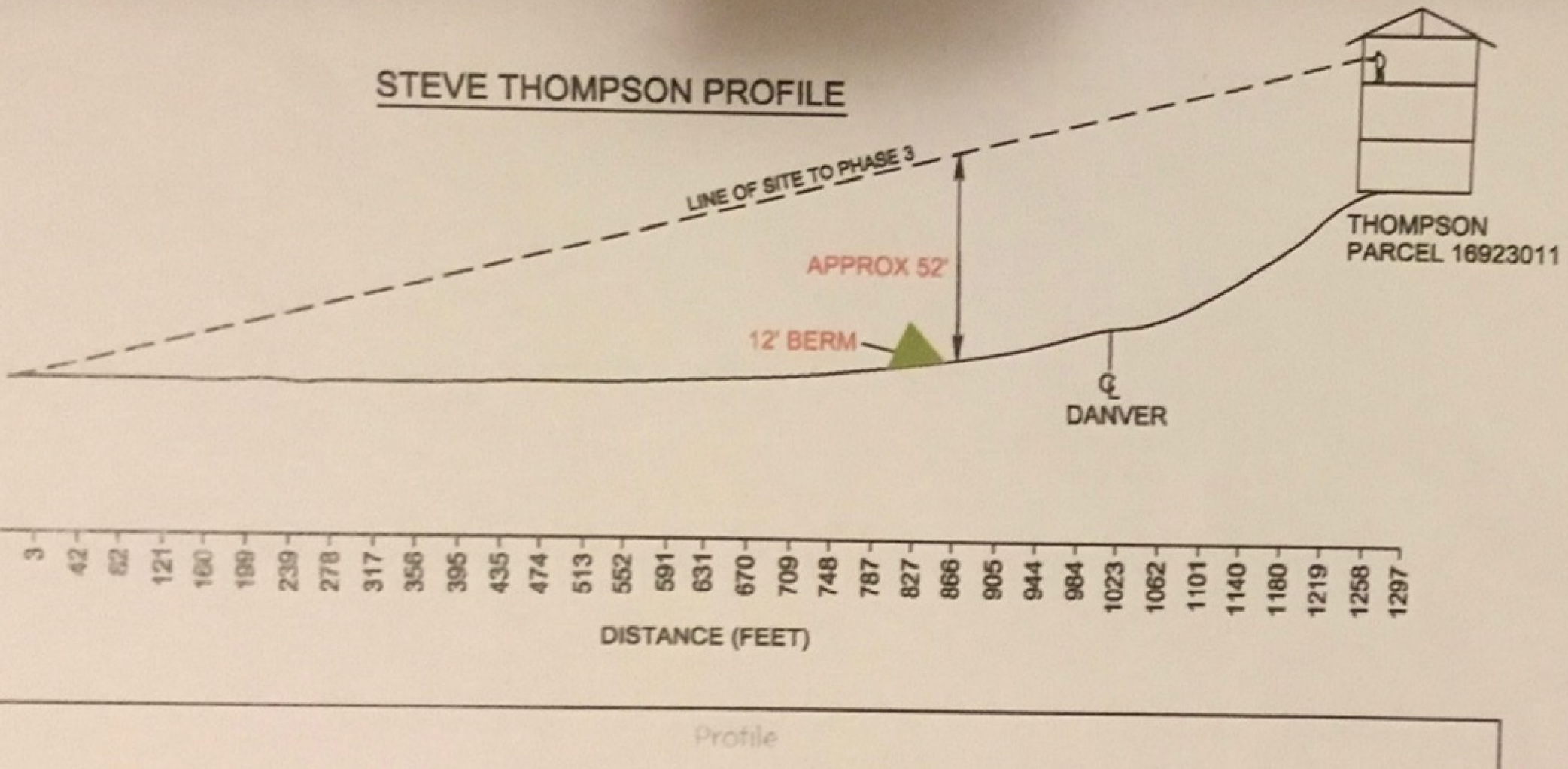
(22) unnecessary. Mining in the water table is common throughout Alaska.

21.29.060 (b) the use of "disturbed" includes basically, the whole site, including stockpiles. This is unrealistic. If there was more industry input, the MSWG would know that in general, the geology on the KPB is quite scarce of suitable topsoil. Every time you move it, you lose some. If we constantly reclamated our sites, we won't have the material to finish the job. Also, this doesn't have the provisions for other uses of the site such as a commercial property or parking lot needing no reclamation. The bonding requirement is also an undue burden as the State requires only \$750.

21.29.120 (c) we feel this is unjust to current operators. While to all it is reneging on the deal they agreed to at time of origin, some PEU's aren't required to submit a reclamation plan with the state and have no way of complying. This is just a way for government to not hold up their end of a deal struck with a citizen and harass them. It is not very becoming of the KPB to do so.

So, as you can see, the Kenai Peninsula Aggregate and Contractors Association and its members, families, and dependents, can find inconsistencies and faults in almost every aspect of this ordinance. It is inconsistent with industry standards, lacks scientific merit, isn't in harmony with other government agencies such as MSHA, OSHA, and DEC. This ordinance lacks an avenue for operators to complete discovery and reclamation that coincides with best management practices. In many areas it is based on false or inconsistent fact and overreach of regulatory power. Such as viewshed rights and wetland mapping. We consider this document as a form of a taking without just compensation and a form of zoning to a specific industry. We urge you to vote no on 2021-41 to save us all the conflict and burden it will surely cause.

Thank you for your consideration, Ed Martin III, President, KPACA.





## Turner, Michele

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**From:** Blankenship, Johni  
**Sent:** Tuesday, January 18, 2022 4:23 PM  
**To:** Turner, Michele  
**Subject:** FW: <EXTERNAL-SENDER>Please provide to the Assembly for tonight's meeting on Ord. 2021-14

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**From:** K, E, & E Martin <keeconstructionllc@yahoo.com>  
**Sent:** Tuesday, January 18, 2022 4:02 PM  
**To:** Blankenship, Johni <JBlankenship@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Please provide to the Assembly for tonight's meeting on Ord. 2021-14

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

To all it may concern :

Below is a Opinion of Jim Valenine of Reno ,NV Posted last Sunday Jan.16th in the "Nevada Appeal " News paper serving Carson City , NV I could not better put one's Rights to Private Property & the Constitutional Rights of Ownership & Due Process unobstructed by Government or anyone else!

Please review all Whereas's for facts & truth before considering any Therefore(s) that don't meet constitutional muster!

This second Class Borough shouldn't legislate ZONING without the power to do so & then only if a" taking is warranted " for a public good , then be prepared to pay just compensation . As I have told several Assembly members " Have the courage" to introduce new Zoning Powers for a vote of the people of this Borough. Otherwise this appears as a " BACK DOOR " way to those means. Ed Martin Jr., 702 Lawton Drive , Kenai, Ak

The Fifth Amendment of the U.S. Constitution includes a provision known as the Takings Clause, which states that "private property (shall not) be taken for public use, without just compensation."

This is a very important component of our Constitution that effects all property owners. Some governmental agencies in recent years have implemented laws, rules, policies and procedures that have impacted the quiet enjoyment of the property and the owner's use of the property which is, in fact, an uncompensated taking. More are being proposed as efforts to redistribute wealth become more commonplace. These often include giving rights to tenants that are adverse to the interest of the property owner with no compensation for their loss(es). Richard B. Sanders, Washington State Supreme Court justice, wrote a treatise about the "Fifth Amendment" wherein he wrote, "Our State, and most other states, define property in an extremely broad sense." He continued, "Property in a thing consists not merely in its ownership and possession, but in the unrestricted right of use, enjoyment, and disposal. Anything which destroys any of the elements of property, to that extent, destroys the property itself. The substantial value of property lies in its use. If the right of use be denied, the value of the property is annihilated and ownership is rendered a barren right."

Two more statements we find relevant: Founding Father John Adams, "The moment the idea is admitted into society that property is not as sacred as the law of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence."

From Nevada's own Wayne Hage, property rights activist, "If you don't have the right to own and control property then you are property."

It is so important to those of us living in the free world environment of the United States to understand that you can own real estate and you can enjoy all of the components of the bundle of rights of real estate ownership, as long as you don't willingly, or unwillingly, let them take them from you.

The bundle of rights affords the owner the right of possession, the right of control, the right of exclusion, the right of enjoyment and the right of disposition. We take it for granted that we have this with our property ownership because of the Fifth Amendment, but like all of the freedoms we enjoy in these United States, we must work to protect them.

.[ One must be diligent in protecting private property rights for all of us.

If you willingly allow a governing body to make a change that adversely affects you, then you cannot claim an uncompensated taking. If a body such as a Local Planning Commission makes changes to which you don't agree that have a negative impact on your, your use of your property and ultimately the value of your property, then you may be the victim of a Fifth Amendment breach.] Other factors can come into play so it is best to do your best to avoid such actions gaining any traction.

Don't let others push their agenda to your detriment. Your real property is yours, yours to do what you want with, not what you are told to do with it. That's why you bought it and that's why others still aspire to experience the American dream of home ownership without it being given to them.

KEE Construction, LLC





DATE: January 19, 2022

TO: KPB Assembly Members

SUBJECT: KPB 2021-41 Version 1  
Material Site Permits, Applications, Conditions and Procedures

RE: Assembly Mtg January 18<sup>th</sup> Testimony

I was asked by multiple Assembly Members to discuss or provide my testimony regarding KPB2021-41 V1. Below are the talking points that I prepared prior to the Assembly meeting. Not all this information was included in my testimony due to time constraints and/or the climate of the chambers.

#### 21.29.030.A.9 (Application Requirements)

Requiring that the site plan be prepared by a licensed surveyor is outside the Surveyors' area of work. Surveyors don't offer site development plan services. The portion of the application that should require a licensed and registered surveyor should be limited to the boundary survey, encumbrances, location and elevation of test holes, adjacent well locations, and location of water bodies. Essentially, a property as-built and boundary survey.

If KPB wants to require a professional to prepare the CLUP site development plan, then the ordinance should specify that a licensed Civil Engineer prepare the remainder of the required items.

The ordinance should require that site elevations (including those of test holes and groundwater) tie to a published datum or benchmark. Otherwise, each site may reference an assumed elevation and not a real-world elevation.

21.29.030.A.9(m) says 'field verification shall include staking the boundary of the parcel as sequentially visible intervals'. This conflicts with 21.29.050.A.1 which says 'stakes shall be in place prior to the issuance of the permit'. It is my recommendation that staking the parcel should be part of the field verification process otherwise prior to application.

#### 21.29.050.A (Permit Conditions)

21.29.050.A.2. Buffer Zones. I caution the Assembly on continuing to increase buffer width requirements without granting the Applicant a means to extract the material that is under or within the buffer zone. Gravel is a commodity that is utilized by all and will continue to be so. By providing the mechanisms for a material site to responsibly extract as much gravel as possible from said site, there becomes less need for additional material sites.

21.29.050.A.6 Waterbodies. The US Army Corps of Engineers no longer has jurisdiction on wetlands that are not connected to Waters of the US. Waterbody setbacks should not apply to these isolated wetlands. These isolated wetlands are often ideal locations of peat mining and often have marketable sand or gravel beneath the peat.

Page 1 of 2



21.29.050.A.21 Groundwater Elevation. Recommend adding that the groundwater monitoring tube be installed when excavation is within 10' or such of the groundwater elevation. Many of the area material sites exceed 20' of usable material and installing a monitoring tube to this depth is a major undertaking. As an example, installing a 25' deep monitoring tube would require an excavation of approximately 2,500 SF hole to gain that depth utilizing traditional excavation equipment.

21.29.050.A.13. Other Permits. Alaska Department of Natural Resources (Division of Land and Water) should be added to this list.

21.29.060 Reclamation Plan. ADNR updated their requirements for Material Sales Reclamation Plans in June 2021. This should be reviewed in context to KPB's reclamation requirements. ADNR has set per-acre bond amount at \$750/acre. ADNR allows for an operator to post bond with another government agency as allowed by a cooperative management agreement between that agency and ADNR Division of Land and Water. Does the Borough have a cooperative management agreement with ADNR? Otherwise, there is the potential for material site operators to have to 'double-bond' for reclamation.

Please feel free to contact me if you have any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina DeBardelaben", written in a cursive style.

Gina DeBardelaben, P.E.  
Vice President  
**McLane Consulting, Inc.**

Introduced by:	Martin
Substitute Introduced:	03/14/06
O2006-01 (Long, Martin, Superman)	See Original Ord for Prior History
Hearing:	03/14/06
Action:	Substitute Introduced and Set for Public Hearings on 04/04/06 and 04/18/06
	Additional Hearing on 05/16/06
Action:	Postponed until 04/18/06
Action:	Time did not Allow for Action
Date:	05/02/06
Action:	Postponed until 05/16/06
Action:	Additional Hearing on 08/01/06
Date:	05/16/06
Action:	Postponed until 08/01/06
Action:	Enacted as Amended
Vote:	8 Yes, 0 No, 0 Absent, 1 Abstention

**KENAI PENINSULA BOROUGH  
ORDINANCE 2006-01 (MARTIN) SUBSTITUTE**

**AN ORDINANCE REPEALING KPB CHAPTER 21.26 AND ENACTING KPB  
CHAPTER 21.29, MATERIAL SITE PERMITS**

**WHEREAS,** Goal 6.5, Objective 1 of the 2005 Kenai Peninsula Borough Comprehensive Plan is to ensure that land use regulations adopted by the borough are necessary to control uses that affect public health and safety and address adverse impacts on the rights of adjacent property owners; and

**WHEREAS,** Goal 6.5, Objective 1, Implementation Action A, is to continue to periodically review and update existing regulations to reflect changing conditions and policies in the borough; and

**WHEREAS,** Goal 6.6 of the 2005 comprehensive plan is to reduce land use conflicts outside of the cities; and

**WHEREAS,** Goal 6.6, Objective 1, Implementation Action D, is to improve the land use regulations currently in existence including those related to material sites to minimize the impacts of erosion and flooding of neighboring properties and to minimize conflicts with surrounding land uses; and

**WHEREAS,** Goal 7.1, Objectives 1 and 2, of the 2005 comprehensive plan are to work with other agencies to protect public health and environment, to avoid duplications of other agencies' regulations, and to provide input to federal and state agencies on local conditions and opinions; and

**WHEREAS,** Goal 1 of the Mining and Minerals Processing section of the 1990 Kenai Peninsula Borough Coastal Management Program is to provide opportunities to explore, extract and process minerals, sand and gravel resources, while protecting environmental quality and other resource users; and

**WHEREAS,** a review of the material site ordinance was undertaken in 1998 after a citizen task force comprised of citizens and industry made recommendations; and

**WHEREAS,** the mayor sponsored Ordinance 98-33 after considering the task force recommendations and supplementing the same; and

**WHEREAS,** assembly members sponsored a substitute Ordinance 98-33 which was ultimately adopted in 1999; and

**WHEREAS,** the planning department has been administering Ordinance 98-33, codified as KPB 21.26 as amended, for six years; and

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

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

**WHEREAS,** the planning department receives comments expressing concerns about dust, noise, and aesthetics which are minimally addressed by the current code; and

**WHEREAS,** there are parcels registered as nonconforming prior existing uses which have not been operated as material sites for a number of years; and

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

**WHEREAS,** an assembly subcommittee was formed in 2005 to review the material site code; and

**WHEREAS,** at its regularly scheduled meeting of July 17, 2006, the Planning Commission recommended enactment of the amended ordinance by unanimous consent.

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

**SECTION 1.** KPB 21.26 Material Site Permits is hereby repealed and KPB 21.29, Material Site Permits, is adopted as follows:

## **CHAPTER 21.29. MATERIAL SITE PERMITS**

### **21.29.010. Material extraction exempt from obtaining a permit.**

- A. Material extraction which disturbs an area of less than one acre that is not in a mapped flood plain or subject to 21.29.010(B), does not enter the water table, and does not cross property boundaries, does not require a permit. There will be no excavation within 20 feet of a right-of-way or within 10 feet of a lot line.
- B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood Service Area does not require a permit, however, operators subject to this exemption shall provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations.
- C. A prior existing use under KPB 21.29.120 does not require a permit.

### **21.29.020. Material extraction and activities requiring a permit.**

- A. Counter permit. A counter permit is required for material extraction which disturbs no more than 2.5 cumulative acres and does not enter the water table. Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension.
- B. Conditional land use permit. A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. A CLUP is required for materials processing. A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPS and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.

### **21.29.030. Application procedure.**

- A. In order to obtain a counter permit or CLUP, an applicant shall first complete and submit to the borough planning department a permit application, along with the appropriate fee as established by resolution of the planning commission and approved by the borough assembly. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application shall include the following items:

1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
2. Expected life span of the material site;
3. A buffer plan consistent with KPB 21.29.050(A)(2);
4. Reclamation plan consistent with KPB 21.29.060;
5. The depth of excavation;
6. Type of material to be extracted and type of equipment to be used;
7. Any voluntary permit conditions the applicant proposes. Failure to include a proposed voluntary permit condition in the application does not preclude the applicant from proposing or agreeing to voluntary permit conditions at a later time;
8. A site plan and field verification prepared by a professional surveyor licensed and registered in the State of Alaska, including the following information:
  - a. location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
  - b. proposed buffers consistent with KPB 21.29.050(A)(2), or alternate buffer plan;
  - c. identification of all encumbrances, including, but not limited to easements;
  - d. points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to the issuance of the material site permit.
  - e. anticipated haul routes;
  - f. location and depth of test holes, and depth of groundwater, if encountered;
  - g. location of wells of adjacent property owners within 300 feet of the proposed parcel boundary;



- h. location of any water body on the parcel, including the location of any riparian wetland as determined by “Wetland Mapping and Classification of the Kenai Lowland, Alaska” maps created by the Kenai Watershed Forum;
  - i. surface water protection measures for adjacent properties, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence; provide designs for substantial structures; indicate which structures will remain as permanent features at the conclusion of operations, if any;
  - j. location of any processing areas on parcel, if applicable;
  - k. north arrow;
  - l. the scale to which the site plan is drawn;
  - m. preparer's name, date and seal;
  - n. field verification shall include staking the boundary of the parcel at sequentially visible intervals. The planning director may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious.
- B. In order to aid the planning commission or planning director’s decision-making process, the planning director shall provide vicinity, aerial, land use, and ownership maps for each application and may include additional information.

**21.29.040. Standards for sand, gravel or material sites.**

- A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:
- 1. protects against the lowering of water sources serving other properties;
  - 2. protects against physical damage to other properties;
  - 3. minimizes off-site movement of dust;
  - 4. minimizes noise disturbance to other properties;

5. minimizes visual impacts; and
6. provides for alternate post-mining land uses.

**21.29.050. Permit conditions.**

- A. The following mandatory conditions apply to counter permits and CLUPs issued for sand, gravel or material sites:
  1. **Parcel Boundaries.** All boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter. Field verification and staking will require the services of a professional land surveyor. Stakes shall be in place at time of application.
  2. **Buffer Zone.** A buffer zone shall be maintained around the excavation perimeter or parcel boundaries. Where an easement exists, a buffer shall not overlap the easement, unless otherwise conditioned by the planning director or planning commission.
    - a. The buffer zone shall provide and retain a basic buffer of:
      - i. 50 feet of undisturbed natural vegetation, or
      - ii. A minimum six-foot earthen berm with at least a 2:1 slope, or
      - iii. A minimum six-foot fence.
    - b. A 2:1 slope shall be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
    - c. The planning commission or planning director shall designate one or a combination of the above as it deems appropriate. The vegetation and fence shall be of sufficient height and density to provide visual and noise screening of the proposed use as deemed appropriate by the planning commission or planning director.
    - d. Buffers shall not cause surface water diversion which negatively impacts adjacent properties or water bodies. Specific findings are required to alter the buffer requirements of KPB 21.29.050(A)(2)(a) in order to minimize negative impacts from surface water diversion. For purposes of this section, surface

water diversion is defined as erosion, flooding, dehydration or draining, or channeling. Not all surface water diversion results in a negative impact.

- e. At its discretion, the planning commission may waive buffer requirements where the topography of the property or the placement of natural barriers makes screening not feasible or not necessary. Buffer requirements shall be made in consideration of and in accordance with existing uses of adjacent property at the time of approval of the permit. There is no requirement to buffer the material site from uses which commence after the approval of the permit.
- 3. Processing. In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of adjacent property at the time.
  - 4. Water Source Separation.
    - a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.
    - b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation from the seasonal high water table be maintained.
    - c. All CLUPS shall be issued with a condition which requires that a two-foot vertical separation from the seasonal high water table be maintained.
    - d. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.

5. Excavation in the Water Table. Excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission based on the following:
  - a. certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.
  - b. the installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate, and water elevation.
  - c. groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three-month intervals by a qualified independent civil engineer or professional hydrogeologist, for at least one year prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
  - d. operations shall not breach an aquifer-confining layer.
6. Waterbodies.
  - a. An undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains as defined in KPB 21.06. This regulation shall not apply to man-made waterbodies being constructed during the course of the materials extraction activities. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.
  - b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.
7. Fuel Storage. Fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.

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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 regarding using and storing explosives. Any violation of these regulations or permits

reported to or observed by borough personnel will be forwarded to the appropriate agency for enforcement.

14. Voluntary permit conditions. Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission for CLUPs or the planning director for counter permits. Such conditions must be consistent with the standards set forth in KPB 21.29.040(A). Planning commission approval of such conditions shall be contingent upon a finding that the conditions will be in the best interest of the borough and the surrounding property owners. Voluntary permit conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in voluntary permit conditions may be proposed at permit renewal or amendment.
15. Signage. For permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access, whichever is more visible. Sign dimensions shall be no more than 15" by 15" and must contain the following information: the phrase "Permitted Material Site" along with the permittee's business name and a contact phone number.

#### **21.29.060. Reclamation plan.**

- A. All material site permit applications require a reclamation plan.
- B. The applicant shall revegetate with a non-invasive plant species and reclaim all disturbed land upon exhausting the material on-site, or within a pre-determined time period for long-term activities, so as to leave the land in a stable condition. Reclamation must occur for all exhausted areas of the site exceeding five acres before a five-year renewal permit is issued, unless otherwise required by the planning commission. If the material site is one acre or less in size and has been granted a CLUP due to excavation in the water table, reclamation must be performed as specified by the planning commission or planning director in the conditional use or counter permit.
- C. The following measures must be considered in preparing and implementing the reclamation plan, although not all will be applicable to every reclamation plan.
  1. Topsoil that is not promptly redistributed to an area being reclaimed will be separated and stockpiled for future use. This material will be protected from erosion and contamination by acidic or toxic materials and preserved in a condition suitable for later use.

2. The area will be backfilled, graded and recontoured using strippings, overburden, and topsoil to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time. It will be stabilized to a condition that will allow sufficient moisture for revegetation.
  3. Sufficient quantities of stockpiled or imported topsoil will be spread over the reclaimed area to a depth of four inches to promote natural plant growth that can reasonably be expected to revegetate the area within five years. The applicant may use the existing natural organic blanket representative of the project area if the soil is found to have an organic content of 5% or more and meets the specification of Class B topsoil requirements as set by Alaska Test Method (ATM) T-6. The material shall be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by a licensed engineer.
  4. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation shall be removed from the site, buried or burned. Topsoil and other organics will be spread on the backfilled surface to inhibit erosion and promote natural revegetation.
  5. Peat and topsoil mine operations shall ensure a minimum of two inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).
  6. Ponding may be used as a reclamation method as approved by the planning commission.
- D. The plan shall describe the total acreage to be reclaimed each year, a list of equipment (type and quantity) to be used in reclamation, and a time schedule of reclamation measures.

**21.29.070. Permit extension and revocation.**

- A. Conditional land use permittees must submit a request in writing for permit extension every five years after the permit is issued. Requests for permit extension must be made at least 30 days prior to permit expiration. Counter permittees must submit any request for a 12-month extension at least 30 days prior to the expiration of the original 12-month permit period.
- B. A permit extension certificate for a CLUP may be granted by the planning director after 5 years, and after one year for a counter permit where no modification to operations or conditions are proposed.

- C. Permit extension may be denied if: (1) reclamation required by this chapter and the original permit has not been performed; (2) the permittee is otherwise in noncompliance with the original permit conditions; or (3) the permittee has had a permit violation in the last two years and has not fulfilled compliance requests.
- D. A modification application shall be processed pursuant to KPB 21.29.030-050 with public notice given as provided by KPB 21.25.060 when operators request modification of their permit conditions based on changes in operations set forth in the modification application.
- E. There shall be no fee for permit extensions approved by the planning director. The fee for a permit modification processed under KPB 21.29.070(D) will be the same as an original permit application.
- F. Failure to submit a request for extension will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KPB 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.
- G. Permits may be revoked pursuant to KPB 21.25.080.

#### **21.29.080. Permit termination.**

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

#### **21.29.090. Permit modifications.**

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

#### **21.29.100. Recordation.**

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

#### **21.29.110. Violations.**

- A. Violations of this chapter shall be governed by KPB 21.24.
- B. In addition to the remedies provided in KPB 21.24, the planning director may require bonding in a form and amount adequate to protect the borough's interests for an owner or operator who has been cited for three violations of KPB 21.24, 21.25, and 21.29 within a three-year period. The violations need not be committed at the same material site. Failure to provide requested bonding may result in permit revocation proceedings.

#### **21.29.120. Prior existing uses.**

- A. Material sites are not held to the standards and conditions of a CLUP if a prior existing use (PEU) determination was granted for the parcel in accordance with KPB 21.29.120(B). To qualify as a PEU, a parcel's use as a material site must have commenced or have been operated after May 21, 1986, and prior to May 21, 1996, provided that the subject use continues in the same location. In no event shall a prior existing use be expanded beyond the smaller of the lot, block, or tract lines as they existed on May 21, 1996. If a parcel is further subdivided after May 21, 1996, the pre-existing use may not be expanded to any lot, tract, or parcel where extraction had not occurred before or on February 16, 1999. If a parcel is subdivided where extraction has already occurred, the prior existing use is considered abandoned, and a CLUP must be obtained for each parcel intended for further material site operations. The parcel owner may overcome this presumption of abandonment by showing that the subdivision is not inconsistent with material site operation. If a parcel subject to a prior existing use is conveyed, the prior existing use survives the conveyance.
- B. Owners of sites must have applied to be registered as a prior existing use prior to January 1, 2001.
- C. Any prior existing use that has not operated as a material site between May 21, 1996, and May 21, 2011, is considered abandoned and must thereafter comply with the permit requirements of this chapter. The planning director shall determine whether a prior existing use has been abandoned. After giving notice to the parcel owner that a PEU is considered abandoned, a parcel owner may protest the termination of the PEU by filing written notice with the planning director on a form provided by the planning department. When a protest by a parcel owner is filed, notice and an opportunity to make written comments regarding prior existing use status shall be issued to owners of property within a one-half mile radius of the parcel boundaries of the site. The owner of the parcel subject to the prior existing use may submit written information, and the planning director may gather and consider any information relevant to whether a material site has operated. The planning director may conduct a hearing if he or she

believes it would assist the decision-making process. The planning director shall issue a written determination which shall be distributed to all persons making written comments. The planning director's decision regarding termination of the prior existing use status may be appealed to the planning commission within 15 days of the date of the notice of decision.

**SECTION 2.** That KPB 21.24.030(C) is hereby amended as follows:

- C. Fine Schedule. The following fines are the scheduled fines for violations. The scheduled fine for an offense may not be judicially reduced.

<i>Code Chapter Section Citation</i>	<i>Chapter / Section Title</i>	<i>Scheduled Fine</i>
KPB 21.06.040	Failure to obtain a development permit	\$75.00
KPB 21.09.060	Violation of nonconforming use/structure provisions	\$50.00
KPB 21.09.070	Prohibited use	\$100.00
KPB 21.09.080	Violation of development standards	\$50.00
KPB 21.09.090(A)	Violation of home occupation standards	\$100.00
KPB 21.09.090(B)	Sign size violation	\$50.00
KPB 21.09.090(C)	Prohibited home occupations	\$100.00
KPB 21.14.030	Failure to obtain a mobile home park permit	\$75.00
KPB 21.18.050(A)	Failure to obtain fuel storage/logging permit	\$75.00
KPB 21.18.060	Prohibited activity in habitat protection area	\$100.00
KPB 21.18.072	Failure to obtain commercial activity permit	\$75.00
KPB 21.18.080	Failure to obtain a conditional use permit	\$75.00
KPB 21.18.090(D)	Failure to obtain expansion/enlargement conditional use permit	\$100.00
KPB 21.24.050	Violation of or removal of an enforcement order	\$100.00
KPB 21.25.040	Failure to obtain land use permit	[\$75.00] <u>\$300.00</u>
<u>KPB 21.29.050</u>	<u>Violation of conditions</u>	<u>\$300.00</u>
KPB 21.42.060	Violation of nonconforming use/structure provisions	[\$75.00] <u>\$300.00</u>
KPB 21.42.090	Prohibited use	\$100.00
KPB 21.42.100	Violation of development standards	\$50.00
KPB 21.42.110(D)	Failure to obtain a home occupation permit	\$75.00
KPB 21.44.110	Violation of nonconforming use standards	\$75.00
KPB 21.44.130	Failure to obtain a home occupation permit	\$75.00
KPB 21.44.160(A)(B)	Prohibited use	\$100.00
KPB 21.44.160(C)	Violation of development standards	\$50.00
KPB 21.44.170(A)(B)	Prohibited use	\$100.00
KPB 21.44.170(C)	Violation of development standards	\$50.00
KPB 21.44.180(A)(B)	Prohibited use	\$100.00
KPB 21.44.180(C)	Violation of development standards	\$50.00
KPB 21.44.190(A)(B)	Prohibited use	\$100.00
KPB 21.44.190(C)	Violation of development standards	\$50.00



KPB 21.44.200(A)	Prohibited use	\$100.00
KPB 21.44.200(B)	Violation of development standards	\$50.00
KPB 21.44.210(B)(C)	Prohibited use	\$100.00
KPB 21.44.210(D)	Violation of development standards	\$50.00

**SECTION 3.** That KPB 21.24.070 is hereby amended as follows:

**21.24.070. Civil fine.**

The Borough code compliance officer may assess a [\$100.00] \$300.00 civil fine for each violation of this chapter. Notice of a fine shall be served personally or by certified mail on the property owner, lessee, operator, or occupant of the parcel upon which the violation occurs. The fine may be appealed to the Planning Commission pursuant to the terms of KPB 21.20. Each day a violation occurs is a separate violation. Citations for fines may be included in an enforcement order. Appeals from the planning commission's determination shall not be taken to the board of adjustment, but shall proceed to the superior court pursuant to the Alaska Rules of Appellate Procedure, Part 6.

**SECTION 4.** KPB 21.25.030, Definitions, is amended to add the following definitions in alphabetical order:

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

*Commercial* means any [USE] provision of services, sale of goods, or use operated for production of income whether or not income is derived, including sales, barter, rental, or trade of goods and services[, AND INCLUDING ALL ACTIVITIES DIRECTLY SUBSIDIARY].

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

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

[ON-SITE USE MEANS MATERIAL USED ENTIRELY WITHIN THE BOUNDARIES OF THE PARCEL IT WAS EXTRACTED FROM, OR WHEN

DEVELOPMENT OF THE PARCEL REQUIRES DISPOSAL OF THE MATERIAL OFF-SITE THROUGH BARTERING.]

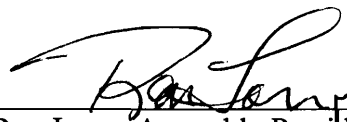
Surface Water means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.

Topsoil means material suitable for vegetative growth.

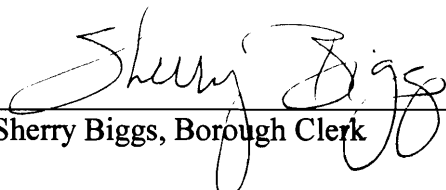
Waterbody means any lake, pond, stream, riparian wetland, or groundwater into which stormwater runoff is directed.

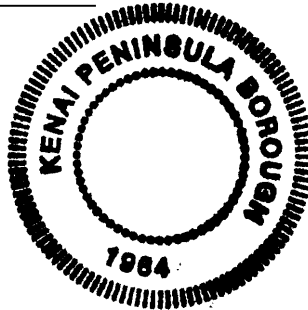
**SECTION 5.** That this ordinance shall take effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 1ST DAY OF AUGUST, 2006.**

  
\_\_\_\_\_  
Ron Long, Assembly President

ATTEST:

  
\_\_\_\_\_  
Sherry Biggs, Borough Clerk



Yes: Chay, Fischer, Germano, Gilman, Martin, Sprague, Superman, Long  
No: None  
Absent: None  
Abstained: Merkes

Introduced by:	Mayor
Substitute Introduced:	01/16/18
Resolution 2018-004 (Mayor)	See Original for Prior History
Action:	Adopted
Vote:	8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2018-004  
(MAYOR) SUBSTITUTE**

**A RESOLUTION ESTABLISHING A MATERIAL SITE WORK GROUP**

**WHEREAS,** KPB 21.25.040(A)(2) requires a permit for the commencement of commercial sand, gravel or material sites within the rural district of the Kenai Peninsula Borough; and

**WHEREAS,** KPB 21.29 provides for a permit process to extract material from the ground; and

**WHEREAS,** with the exception of one minor change relating to floodplain permits, the material site code was last updated in 2006; and

**WHEREAS,** the assembly, administration, planning department and the planning commission have recognized that certain provisions of the material site ordinance can be clarified for the operators, public, and staff; and;

**WHEREAS,** the public has expressed many concerns about dust, noise, water, and negative secondary impacts of material sites; and

**WHEREAS,** it is the intent of the assembly and administration to involve the public and industry in a collaborative discussion designed to incorporate possible changes to the material site code;

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

**SECTION 1.** That a work group is established for the purpose of examining the current material site permit process and potentially recommending amendments to the material site code provisions.

**SECTION 2.** That the work group shall consist of at least two assembly members; two planning commissioners; two members of the public; and, two material site industry members. The group shall elect from among its members a chair and a vice-chair who may serve in the absence of the chair. The two members of the assembly shall be appointed by the assembly. The remaining members shall be appointed by the mayor.

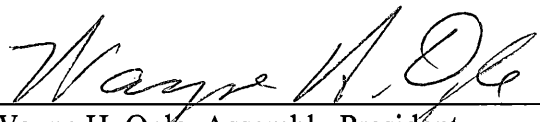
**SECTION 3.** That each meeting time and place shall be advertised, open to the public and subject to the Open Meetings Act.

**SECTION 4.** The material site work group shall have no authority to act on behalf of the assembly or the administration or communicate on the borough's behalf other than to make recommendations to the planning commission, administration and assembly.


**SECTION 5.** The work group shall provide a final report to the planning commission, administration and assembly by June 5, 2018, and then discontinue unless extended by the assembly.

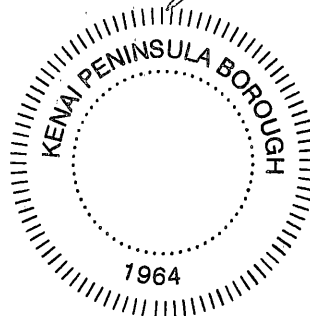
**SECTION 6.** That this resolution shall take effect immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF JANUARY, 2018.**

  
Wayne H. Ogle, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



Yes: Bagley, Blakeley, Carpenter, Dunne, Fischer, Hibbert, Smalley, Ogle

No: None

Absent: Cooper

Introduced by: Ogle  
Date: 05/15/18  
Action: Adopted as Amended  
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2018-025**

**A RESOLUTION EXTENDING THE DEADLINE FOR SUBMISSION OF THE  
MATERIAL SITE WORKING GROUP'S FINAL REPORT**

**WHEREAS,** a material site working group ("MSWG") was formed by Resolution 2018-004 on January 16, 2018; and

**WHEREAS,** a final report is due to the administration, planning commission and assembly by June 5, 2018; and

**WHEREAS,** the MSWG needs additional time to consider proposed revisions to the material site code, explore additional revisions, and hear and consider public testimony regarding the same; and

**WHEREAS,** the summer months are the most active for material site operators who may not have time to be involved in the public process during that time frame; and

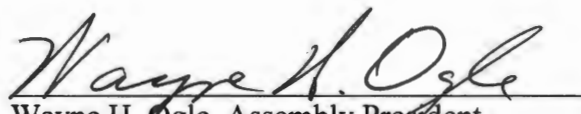
**WHEREAS,** the planning commission considered this resolution at its May 14, 2018 meeting and recommended approval by majority consent;

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

**SECTION 1.** The deadline for the final report of the MSWG is extended to April 30, 2019. Meetings of the MSWG are suspended from June 1, 2018 through September 30, 2018.

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

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS  
15TH DAY OF MAY, 2018.**

  
Wayne H. Ogle, Assembly President

ATTEST:

  
Johni Blankenship, MMC, Borough Clerk



Yes: Bagley, Blakeley, Carpenter, Cooper, Dunne, Fischer, Hibbert, Smalley, Ogle  
No: None  
Absent: None



# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Bill Elam, Assembly Member *BE*

**DATE:** January 18, 2022

**SUBJECT:** Elam Amendment #1 to Ordinance 2021-41, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures (Johnson, Mayor)

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

➤ Amend Section 3, KPB 21.29.030(A)(9)(h), as follows:

**21.29.030. Application procedure.**

...

- h. Location of any water body on the parcel, including the location of any riparian wetland as determined by **best available data** [~~**"WETLAND MAPPING AND CLASSIFICATION OF THE KENAI LOWLAND, ALASKA" MAPS CREATED BY THE KENAI WATERSHED FORUM**~~];

Your consideration of this amendment is appreciated.

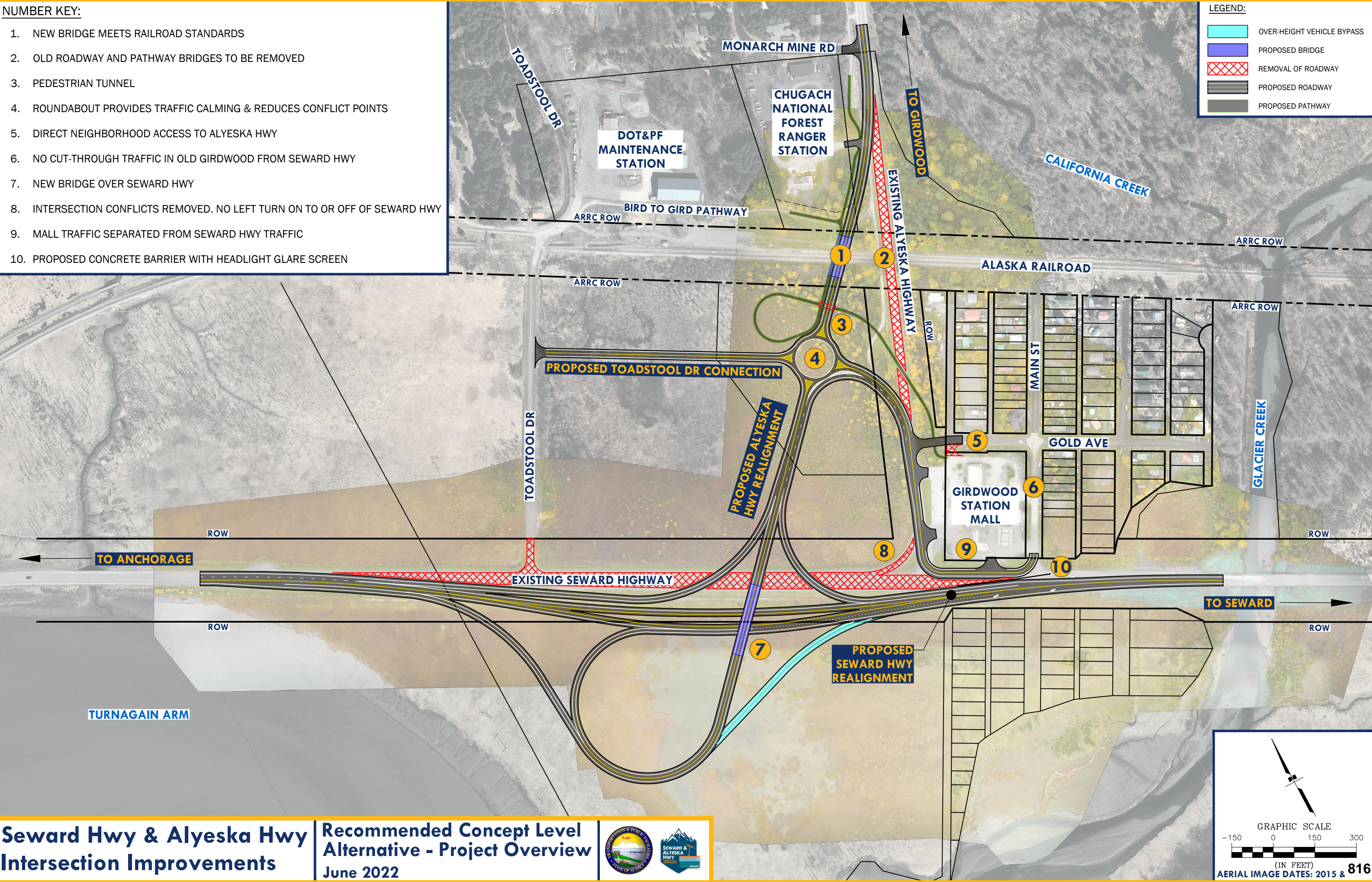


NUMBER KEY:

- 1. NEW BRIDGE MEETS RAILROAD STANDARDS
- 2. OLD ROADWAY AND PATHWAY BRIDGES TO BE REMOVED
- 3. PEDESTRIAN TUNNEL
- 4. ROUNDABOUT PROVIDES TRAFFIC CALMING & REDUCES CONFLICT POINTS
- 5. DIRECT NEIGHBORHOOD ACCESS TO ALYESKA HWY
- 6. NO CUT-THROUGH TRAFFIC IN OLD GIRDWOOD FROM SEWARD HWY
- 7. NEW BRIDGE OVER SEWARD HWY
- 8. INTERSECTION CONFLICTS REMOVED. NO LEFT TURN ON TO OR OFF OF SEWARD HWY
- 9. MALL TRAFFIC SEPARATED FROM SEWARD HWY TRAFFIC
- 10. PROPOSED CONCRETE BARRIER WITH HEADLIGHT GLARE SCREEN

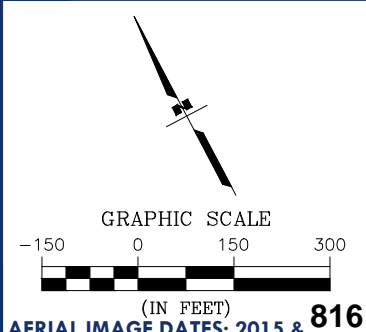
LEGEND:

- OVER-HEIGHT VEHICLE BYPASS
- PROPOSED BRIDGE
- REMOVAL OF ROADWAY
- PROPOSED ROADWAY
- PROPOSED PATHWAY

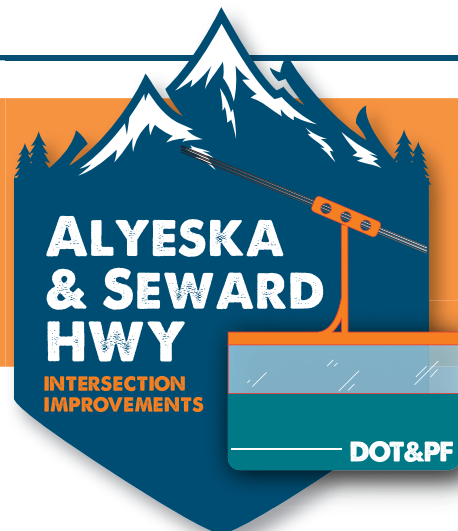


Seward Hwy & Alyeska Hwy  
Intersection Improvements

Recommended Concept Level  
Alternative - Project Overview  
June 2022







The Alaska Department of Transportation & Public Facilities (DOT&PF) is working to improve the capacity, operation, and safety of the Alyeska Hwy & Seward Hwy Intersection.

## ABOUT:

The Alyeska Hwy intersection at MP 90 of the Seward Hwy is an important node along the 125-mile scenic byway and falls within the Safety Corridor. It is the gateway into Girdwood, and offers the only major stop for fuel and groceries between Anchorage and Seward. The current intersection is an at-grade tee configuration with left and right turn lanes on the Seward Hwy and a free right for Anchorage-bound traffic coming from Alyeska Hwy. Seward Hwy traffic is characterized by extreme seasonal peaks, with July volumes almost six times that of January volumes. That reduces the number of available gaps for turning vehicles, leading to increased delay. This is exacerbated by the many access points around the Girdwood Station Mall and associated turning movements.

While the intersection itself does not experience a higher-than-expected crash rate when compared to similar intersections throughout the state, many of the crashes that have occurred involve left-turning vehicles. These crashes have the potential to be high-severity and involve the movements that experience the most delay. Alternatives that reduce the delay for left turns are likely to also improve safety for these movements.

## SCOPE:

DOT&PF has funded the project for engineering, environmental and public involvement activities through the selection of an alternative and development of the design to the 30% level, including compliance with the Municipality of Anchorage's Context Sensitive Solutions (CSS) Policy and the National Environmental Policy Act (NEPA).

## BENEFITS OF CONCEPT LEVEL ALTERNATIVE:

- All movement free flow, no stops
- Same number of mall access points
- No impact to internal mall circulation
- Reduce construction impacts due to off-alignment construction
- Pathway designed to current standards
- Seward Hwy designed for 65 mph
- Design accommodates future 4-lane divided hwy
- Roundabout provides opportunity to create a gateway feel into Girdwood
- Intersection lighting to improve visibility

## CONTACT:

PROJECT MANAGER, DOT&PF  
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