



# Kenai Peninsula Borough

144 North Binkley Street  
Soldotna, AK 99669

## Meeting Agenda Assembly

*Brent Johnson, President*

*Tyson Cox, Vice President*

*Jesse Bjorkman*

*Lane Chesley*

*Richard Derkevorkian*

*Cindy Ecklund*

*Bill Elam*

*Brent Hibbert*

*Mike Tupper*

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Tuesday, November 15, 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.*

[Clerk's Note: The invocation will be given by Dr. Edward Goans.]

### 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 4705: October 25, 2022 Regular Assembly Meeting Minutes  
Resolution 2022-056: Authorizing Acquisition of Three Lots of Land  
Resolution 2022-057: Kasilof River Boat Takeouts  
Ordinance 2022-19-26: “Year Two” Opioid Settlement Funds  
Ordinance 2022-19-27: Fish Passage Project  
Ordinance 2022-19-28: Hydrocarbon and Accelerant Detectors  
Ordinance 2022-19-29: Projects in Lost Creek and Sawmill Creek  
Ordinance 2022-19-30: Land Management Operations for 2023  
Ordinance 2022-19-31: Bond Funded School Projects  
Ordinance 2022-19-32: South Peninsula Hospital Renovation Project  
Ordinance 2022-19-33: Deputy Clerk’s Position  
KPB 4716: Confirming Appointments to Service Area Boards  
KPB 4719: Confirming an Appointment to RSAC  
KPB 4717: Approval of the 2023 Assembly Meeting Schedule  
KPB 4747: Confirming Appointments to APCs

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

Ordinance 2022-19-25: Litigation Fees Related to an Oil and Gas Property Tax Appeal

**APPROVAL OF MINUTES**

[KPB-4705](#)      October 25, 2022 Regular Assembly Meeting Minutes

Attachments:      [October 25, 2022 Regular Assembly Meeting Minutes](#)

**COMMENDING RESOLUTIONS AND PROCLAMATIONS**

[KPB-4713](#)      Mayor's Proclamation - November 22, 2022 Family Caregiver Month

Attachments:      [Family Caregiver Month Proclamation 2022](#)

**PRESENTATIONS WITH PRIOR NOTICE**

*(20 minutes total)*

[KPB-4714](#)      North Road Task Force Presentation: Dil Uhlin, Roads Director (10 minutes)

Attachments:      [LAYDOWN NREATF Presentation](#)  
                             [LAYDOWN NREATF Summary Report](#)



[KPB-4715](#) Homer Trail Alliance: Billy Day (10 minutes)

Attachments: [Homer Trails Alliance presentation](#)

## **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

1. [2022-19-25](#) An Ordinance Appropriating Funds to the Legal Department for Litigation Fees and Costs Related to an Oil and Gas Property Tax Appeal (Mayor) (Hearing on 11/15/22)

Attachments: [Ordinance 2022-19-25](#)  
[Memo](#)

2. [2022-42](#) An Ordinance Approving the 2023 Asset Allocation for the Land Trust Investment Fund Investments and Amending KPB Code 5.10.200(B) to Update and Add New Subsections Under Authorized Investments (Mayor) (Hearing on 11/15/22)

Attachments: [Ordinance 2022-42](#)  
[Memo](#)

## **NEW BUSINESS**

### **2. Resolutions**

Resolutions referred to Lands Committee

- \*a. [2022-056](#) A Resolution Authorizing the Acquisition by Donation of Three Lots of Land Located in the Seward Area on Behalf of the Seward Bear Creek Flood Service Area (Mayor)

Attachments: [Resolution 2022-056](#)  
[Memo](#)  
[Map](#)  
[Vesting Deed](#)  
[Executed Purchase Agreement](#)

- \*b. [2022-057](#) A Resolution Supporting Privately Owned Boat Take-Outs on the Lower Kasilof River (Johnson)

Attachments: [Resolution 2022-057](#)  
[Memo](#)

### 3. Ordinances for Introduction

Ordinances for Introduction and referred to Finance Committee

- \*a. [2022-19-26](#) An Ordinance Accepting and Appropriating the “Year Two” Opioid Settlement Funds Distributed Through the State of Alaska (Mayor) (Hearing on 12/13/22)

Attachments: [Ordinance 2022-19-26](#)  
[Memo](#)

- \*b. [2022-19-27](#) An Ordinance Accepting and Appropriating Grant Funds of \$150,000 for the Kenai Peninsula Borough Fish Passage Project, a Partnership between the Kenai Peninsula Borough and the U.S. Fish & Wildlife Service (Mayor) (Hearing on 12/13/22)

Attachments: [Ordinance 2022-19-27](#)  
[Memo](#)

- \*c. [2022-19-28](#) An Ordinance Accepting and Appropriating a Grant from FM Global for the Purchase of Two Hydrocarbon and Accelerant Detectors for Western Emergency Service Area (Mayor) (Hearing on 12/13/22)

Attachments: [Ordinance 2022-19-28](#)  
[Memo](#)

- \*d. [2022-19-29](#) An Ordinance Appropriating Supplemental Funding of \$216,165 from the Seward Bear Creek Flood Service Area Fund to Replenish the Emerging Situations Budget and to Fund Site Maintenance Projects in Lost Creek and Sawmill Creek (Mayor) (Hearing on 12/13/22)

Attachments: [Ordinance 2022-19-29](#)  
[Memo](#)

- \*e. [2022-19-30](#) An Ordinance Appropriating Supplemental Funds to Land Management Operations for the Remainder of Fiscal Year 2023 (Mayor) (Hearing on 12/13/22)

Attachments: [Ordinance 2022-19-30](#)  
[Memo](#)

- \*f. [2022-19-31](#) An Ordinance Appropriating \$1,625,000 from the General Fund to Provide Interim Funding for Preliminary Design and Development of the Bond Funded School Projects Authorized by Ballot Proposition 2 at the October 2022 Election (Mayor) (Hearing on 12/13/22)

Attachments: [Ordinance 2022-19-31](#)  
[Memo](#)

- \*g. [2022-19-32](#) An Ordinance Deobligating Previously Appropriated Project Funds of \$1,522,530 and Appropriating \$659,783 of those Funds for the Expanded Scope of South Peninsula Hospital Nuclear Medicine/Pharmacy/Infusion Renovation Project (Mayor) (Hearing on 12/13/22)

Attachments: [Ordinance 2022-19-32](#)  
[Memo](#)

- \*h. [2022-19-33](#) An Ordinance Amending the Deputy Borough Clerk Job Description, Approving a Full-Time Records Manager Position and Appropriating Necessary Funds for the Position (Johnson, Cox) (Hearing on 12/13/22)

Attachments: [Ordinance 2022-19-33](#)  
[Memo](#)  
[FY23 Salary Schedule](#)  
[Deputy Borough Clerk Job Description](#)  
[Records Manager Job Description](#)

#### 4. Other

Other items referred to Policies and Procedures Committee

**\*a.**     [KPB-4716](#)     Confirming Appointments to Service Area Boards (Mayor)

East Peninsula Highway Emergency Service Board  
Sean P. Carrington, Seat C, Term Expires 10/2025

Kachemak Emergency Service Area Board  
Ralph Crane, Seat E, Term Expires 10/2025

Nikiski Senior Service Area Board  
Daniel H. Kartchner, Seat B, Term Expires 10/2025

Seldovia Recreational Service Area Board  
Karen R. Latimer, Seat A, Term Expires 10/2025

Attachments:     [Appointments to Service Area Boards](#)

**\*b.**     [KPB-4719](#)     Confirming an Appointment to the Resilience and Security Advisory Commission (Mayor)

Central Peninsula Seat  
Jeremy Spring Flynn, Term Expires 09/30/2025

Attachments:     [Appointment to Resilience and Security Advisory Committee](#)

**\*c.**     [KPB-4717](#)     Approval of the 2023 Assembly Meeting Schedule (Johnson)

Attachments:     [2023 Meeting Schedule](#)

- \*d. [KPB-4747](#) Confirming Appointments to the Kenai Peninsula Borough Advisory Planning Commission (Mayor)

Anchor Point Advisory Planning Commission  
Angela Roland, Seat G, Term Expires 09/30/2024

Funny River Advisory Planning Commission  
Michael Masters, Seat G, Term Expires 09/30/2025

Nikiski Advisory Planning Commission  
Tom Coursen, Seat A, Term Expires 09/30/2023  
Patricia Williams, Seat B, Term Expires 09/30/2023  
Karen S. McGahan, Seat C, Term Expires 09/30/2024  
Lenora Niesen, Seat D, Term Expires 09/30/2024  
Kelly Brewer, Seat E, Term Expires 09/30/2025  
Michael A. Peek, Seat F, Term Expires 09/30/2025  
Jason Ross, Seat G, Term Expires 09/30/2025

Attachments: [Memo Appointments to Advisory Planning Commission](#)

## MAYOR'S REPORT

Mayor's Report Cover Memo

[KPB-4748](#) Mayor's Report Cover Memo

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

1. Assembly Requests/Responses
2. Agreements and Contracts

- a. [KPB-4749](#) Funny River Fire Station Compressor

Attachments: [Funny River Fire Station Compressor](#)

- b. [KPB-4750](#) Change Order for Hope Site Environmental Clean Up

Attachments: [Change Order for Hope Site Environmental Clean Up](#)

- c. [KPB-4751](#) Nikiski High School lockers, Co-op Purchase Authorization

Attachments: [Nikiski High School Lockers](#)

- d. [KPB-4752](#) Purchase of a Type 1 Ambulance for Kachemak Emergency Service Area: Under the Houston Galveston Area Council (H-GAC) Cooperative Purchasing  
*Attachments:* [Kesa Ambulance Purchase](#)
- e. [KPB-4753](#) Northern Support Services “Carehawk” Sole Source Waiver  
*Attachments:* [Northern Support Services Carehawk](#)
- f. [KPB-4754](#) KPB Cyber Security Operations Center Contract Under NASPO Contract #NVP-2018-CLOUD-0002  
*Attachments:* [Cyber Security Operations Center Contract](#)
- g. [KPB-4755](#) Totem Equipment and Supply SANY215 Sole Source Waiver  
*Attachments:* [Totem Equipment and Supply](#)
- h. [KPB-4756](#) Authorization to Award a Contract for ITB23-013 Kenai, Nikiski, Sterling Transfer Facilities Operation and Maintenance 2023  
*Attachments:* [Auth to Award ITB23-013 Kenai, Nikiski, Sterling](#)
- i. [KPB-4757](#) Authorization to Award a Contract for ITB23-012 Seward Transfer Facilities Operations and Maintenance 2023  
*Attachments:* [Auth to Award ITB23-012 Seward](#)
- j. [KPB-4758](#) Transfer Additional Road Funds to Sport Lake, Hakala, Cotman Dr.  
*Attachments:* [RSA Memo Sport Lake](#)
3. Other
- a. [KPB-4759](#) Kachemak City All Hazards Mitigation Plan 2022 Update  
*Attachments:* [Kachemak City All Hazards](#)

## **PUBLIC COMMENTS AND PUBLIC PRESENTATIONS**

## **ASSEMBLY COMMENTS**

## **PENDING LEGISLATION**

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

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)

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](#)

## ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS

### 1. December 13, 2022 Material Subcommittee Meeting

Time TBD Betty J. Glick Assembly Chambers

Borough Administration Building

Remote participation available through Zoom

Meeting ID: 884 7373 9641 Passcode: 671108

### 2. December 13, 2022 Regular Assembly Meeting

Time 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

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Tuesday, October 25, 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 Talakai Finau.]

### ROLL CALL

*[Clerk's Note: Assembly Member Chesley participated via Zoom.]*

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

Also present were:

Mike Navarre, Borough Mayor

Sean Kelley, Borough Attorney

Brandi Harbaugh, Finance Director

Johni Blankenship, Borough Clerk

Avery Warner, Borough Clerk Assistant

### COMMITTEE REPORTS

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

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

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

**MOTION:** To suspend the rules and authorize the assembly material site subcommittee members, a committee of the whole, to vote on the proposed amendments to Ordinance 2022-36 at subcommittee meetings.

**The motion to suspend the rules carried by the following vote:**

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

## APPROVAL OF AGENDA AND CONSENT AGENDA

Hibbert moved to approve the Agenda and Consent Agenda.

[KPB-4664](#) October 11, 2022 Regular Assembly Meeting Minutes

A motion was made by Hibbert to approve the Agenda and Consent Agenda. The motion carried by the following vote:

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

[2022-19-20](#) An Ordinance Appropriating \$100,000 to the Legal Department to Cover Costs of Hiring Hearing Officers for Planning Commission Appeals (Johnson at the Request of the Borough Attorney) (Hearing on 10/25/22)

This Budget Ordinance was introduced and set for public hearing.

[2022-19-21](#) An Ordinance Appropriating Supplemental Funding to Complete the Uninterrupted Power Supply Replacement Project Located in the Emergency Response Center (Mayor) (Hearing on 10/25/22)

This Budget Ordinance was introduced and set for public hearing.

[2022-19-22](#) An Ordinance Accepting and Appropriating \$441,000 from the State of Alaska Department of Military and Veteran Affairs, Division of Homeland Security and Emergency Management for Areawide Warning Sirens and Cybersecurity Upgrades (Mayor) (Hearing on 10/25/22)

This Budget Ordinance was introduced and set for public hearing.

[2022-19-23](#) An Ordinance Accepting \$200,000 from the State of Alaska Department of Military and Veterans Affairs, Division of Homeland Security & Emergency Management for Emergency Management Operations and Appropriating \$40,000 for the Remaining Match Requirement (Mayor) (Hearing on 10/25/22)

This Budget Ordinance was introduced and set for public hearing.

[2022-19-24](#) An Ordinance Appropriating \$653,900 from the General Fund for Increased Costs of Contract Services for Operation of the Seward, Kenai, Nikiski and Sterling Transfer Facilities (Mayor) (Hearing on 10/25/22)

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

New Business

[2022-054](#) A Resolution Approving the Acquisition of a Public Access Easement from the State of Alaska for Watermelon Trail (Mayor)

**This Resolution was adopted.**

[2022-055](#) A Resolution Authorizing One Full-Time Assessing Clerk Classified Service Position (Mayor)

**This Resolution was adopted.**

[2022-19-25](#) An Ordinance Appropriating Funds to the Legal Department for Litigation Fees and Costs Related to an Oil and Gas Property Tax Appeal (Mayor) (Hearing on 11/15/22)

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

[KPB-4636](#) Approving a New Liquor License filed by Vince Benjamin DBA: Mt. Marathon Brewing Company, License NO. 5894

**approved.**

[KPB-4672](#) Petition to Vacate a 60' Wide Section of Ciccone Street Right-of-Way and Associated Utility Permits; KPB File 2022-136V.

[Clerk's Note: The Planning Commission approved the referenced petition to vacate at its October 10, 2022 meeting by unanimous consent.]

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

**ASSEMBLY REORGANIZATION**

1. Election of President and Vice President

President Johnson called for nominations for the office of Assembly President.

Mr. Cox nominated Mr. Johnson.

Mr. Derkevorkian nominated Mr. Hibbert.

Mr. Johnson was elected as Assembly President.

President Johnson called for nominations for the office of Assembly Vice President.

Mr. Elam nominated Mr. Hibbert.

Ms. Ecklund nominated Mr. Cox.

Mr. Derkevorkian nominated Mr. Elam.

Mr. Cox was elected as Assembly Vice President.

*[Clerk's Note: Mr. Chesley cast his secret ballot via text to the Borough Clerk.]*

## COMMENDING RESOLUTIONS AND PROCLAMATIONS

1. [KPB-4671](#) Mayor's Proclamation declaring October 23, 2022 through October 29, 2022 Childhood Cancer Awareness Week

## PRESENTATIONS WITH PRIOR NOTICE

1. [KPB-4665](#) South Peninsula Hospital Quarterly Report (10 minutes)  
*[Clerk's Note: Ryan Smith, CEO and Angela Hinnegan, COO of South Peninsula Hospital Inc. presented a quarterly report to the Assembly.]*

2. [KPB-4666](#) Central Peninsula Hospital Quarterly Report (10 minutes)  
*[Clerk's Note: Shaun Keef, CEO of Central Peninsula Hospital Inc. presented a quarterly report to the Assembly.]*

## PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA

President Johnson called for public comment.

**Mako Haggerty**, Prince William Sound R.C.A.C. provided a committee update to the assembly.

**Robin Davis**, Engel Street addressed the assembly regarding the Mayor Pierce harassment allegations.

**Michele Vasquez**, addressed the assembly regarding the Mayor Pierce harassment allegations.

**John Bollen**, Strawberry Road addressed the assembly regarding material site code

re-write.

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

## **PUBLIC HEARINGS ON ORDINANCES**

[2022-19-19](#) An Ordinance Calling For A Special Mayoral Election, Setting The Special Election Date, And Appropriating Necessary Funds (Johnson) (Hearing on 10/25/22)

**Cox moved to enact Ordinance 2022-19-19.**

President Johnson called for public comment.

**Joan Corr**, Soldotna addressed the assembly regarding Ordinance 2022-19-19.

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

**Hibbert moved to amend Ordinance 2022-19-19 as follows:**

Amend Section 1 to read, "That the Assembly directs the Borough Clerk acting in her capacity as the Election Supervisor to conduct a Special Mayoral Election on February 14, 2023."

**The motion to amend Ordinance 2022-19-19 carried by the following vote:**

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

Assembly Member Cox spoke in support of Ordinance 2022-19-19 as amended.

**The motion to enact Ordinance 2022-19-19 as amended carried by the following vote:**

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

[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)

*[Clerk's Note: The motion to enact was on the floor from the September 6, 2022 meeting.]*

President Johnson called for public comment.

The following people addressed the assembly regarding Ordinance 2022-36:

**Mark Torni**

**Shane Campbell**  
**Sue Mauger**, Cook Inlet Keeper  
**Susan Braden**  
**Dick Hamilton**  
**Ed Martin III**  
**Ralph Johnson**  
**Robert Peterkin**  
**Patrick Cummins**  
**Kyle Foster**  
**Cap Schafer**

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

**Hibbert moved to postpone Ordinance 2022-36 to December 13, 2022.**

**The motion to postpone Ordinance 2022-36 to December 13, 2022 carried by the following vote:**

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

## **MAYOR'S REPORT**

[KPB-4673](#) Mayor's Report Cover Memo

1. Assembly Requests/Responses - None.
2. Agreements and Contracts
  - a. [KPB-4677](#) Authorization to Award a Contract for ITB23-002 South Peninsula Hospital Roof Replacement
  - b. [KPB-4678](#) Authorization to Award a Contract for ITB23-014 Nikiski Fire Station #2 Lighting
  - c. [KPB-4683](#) 23F1A Bruno Road Flooding Event - Real Property Tax Exemptions - Disaster Damage
  - d. [KPB-4686](#) Central Peninsula Landfill - Landfill Gas to Energy Update
  - e. [KPB-4687](#) South Peninsula Future Inert Waste Landfill Search
3. Other
  - a. [KPB-4679](#) Budget Revisions - September 2022
  - b. [KPB-4680](#) Revenue-Expenditure Report - September 2022

- c. [KPB-4681](#) Capital Projects Reports - September 30, 2022

## **PUBLIC COMMENTS AND PUBLIC PRESENTATIONS**

President Johnson called for public comment.

**Joan Corr**, Soldotna addressed the assembly regarding the flooding on Kalifornsky Beach Road and Ordinance 2022-36.

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

## **ASSEMBLY COMMENTS**

Assembly Member Elam thanked everyone for attending and providing testimony. He stated through the material site re-write process, he wanted to be sure the operators had access to water as it was vital to their operations.

Vice President Cox reminded everyone of the activities at Soldotna High School. He reminded everyone to drive safely on the slick roads. He wished everyone a good evening.

Assembly Member Tupper reminded everyone to vote. He stated Pier One Theatre was putting on the production *Beauty and the Beast* October 28 and October 29, 2022 at 7:30 p.m.

Assembly Member Bjorkman thanked everyone for attending and providing testimony. He encouraged everyone to submit their comments and suggestions regarding material site code re-write to the assembly via email. He congratulated President Johnson and Vice President Cox on their election and stated he looked forward to another year. Mr. Bjorkman reminded everyone to drive safely and wished everyone a good evening.

Assembly Member Ecklund congratulated President Johnson and Vice President Cox on their election. She stated she really appreciated everyone's comments and suggestions regarding the material site code re-write. She wished everyone a good evening.

Assembly Member Hibbert congratulated President Johnson and Vice President Cox on their election. He reminded everyone to vote. He wished everyone a good evening and to be safe.

President Johnson thanked Mr. Hibbert for service as Vice President last year. He stated he attended the Road Service Area Board meeting and thanked the Deputy

Clerk for helping to get their Zoom meeting back online. He stated he attended the College Council meeting and gave a brief update. Mr. Johnson thanked the assembly for choosing him as their President for another year. He congratulated Vice President Cox as well.

## **INFORMATIONAL MATERIALS AND REPORTS**

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

1. November 15, 2022 Material Subcommittee Meeting

Time TBD Betty J. Glick Assembly Chambers

Borough Administration Building

Remote participation available through Zoom

Meeting ID: 884 7373 9641 Passcode: 671108

2. November 15, 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 9:26 p.m.

I certify the above represents accurate minutes of the Kenai Peninsula Borough Assembly meeting of October 25, 2022.

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Johni Blankenship, MMC, Borough Clerk

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



**KENAI PENINSULA BOROUGH  
ALASKA  
PROCLAMATION**

**WHEREAS,** *Alzheimer's disease, the most common form of dementia, is a progressive and degenerative brain disorder that causes memory loss and affects self-care, decision making, and behavior; and*

**WHEREAS,** *there are 8,500 Alaskans now living with Alzheimer's disease and current projections indicate this rate will increase to 12,000 individuals by 2025; and*

**WHEREAS,** *dementia is a leading cause of death in Alaska and the only leading cause of death in the country with no known treatments to prevent, cure, or even delay the onset or slow the progression of the disease; and*

**WHEREAS,** *with early detection and diagnosis, individuals, and families can gain access to medications and support services which promote quality of life, fully participate in planning for the future, and enroll in critical research trials; and*

**WHEREAS,** *the Kenai Peninsula Borough recognizes the efforts of the Alzheimer's Association to promote awareness of Alzheimer's disease and other dementias, and provide care and support to all those affected, thereby improving the quality of life for individuals living with dementia and their caregivers; and*

**WHEREAS,** *every November, Family Caregiver Month is a time to honor family caregivers across Alaska and the country. It offers an opportunity to raise awareness of caregiving issues, educate communities, and increase support for caregivers; and*

**WHEREAS,** *it is important to recognize the stories, strengths, and efforts of the individuals, families, friends, and caregivers impacted by dementia, as well as the tireless work of the researchers who are seeking a cause and cure;*

**NOW THEREFORE,** *I, Mayor Mike Navarre do hereby proclaim November 2022 and every November from here out to be, in our Kenai Peninsula Borough as:*

***Family Caregiver Month***

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**Mike Navarre**  
**Mayor**

# NORTH ROAD EXTENSION ADVISORY TASK FORCE

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SUMMARY REPORT

# SUMMARY OF ACTIONS

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- The North Road Extension Advisory Task help regular monthly meetings from February 2022 to September 2022. The goal of these meetings were to determine:
  - Are residents FOR or AGAINST the extension and/or further extension
  - Scope of work if the project was supported
  - Potential funding sources
  - Community support

# SUMMARY OF ACTIONS CONTINUED

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- A survey was created and made available on the Roads website asking the following questions:
  - Name
  - Do you support the extension or are you opposed to it?
  - Why do you either support or oppose the project?
  - Are there other improvements you would like to see on the current extension?
  - Do you resident full time in Gray Cliff or Moose Point or do you own recreation property there?
  - How o you use the North Road Extension
    - Hunting Commercial Fishing
    - ATV or Snow Machine Riding

## SUMMARY OF ACTIONS CONTINUED

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- Residents and property owners were made aware of the taskforce and survey opportunity through several avenues.
  - Board Member direct communication
  - Through routine public meetings
  - Mailing campaign
- We had a total 127 survey responses
  - 95 in favor of the extension to moose point
  - 32 were opposed

# PUBLIC NEED

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- Residents and board members feel that they have paid into the system for 40 years and would like to see the North Road Extension extended to the end of subdivision for the following reasons.
  - Safe ingress and egress for emergency services
  - Safe ingress and egress to their properties
  - Reduce Environmental impact cause by ATV/UTV/4x4
  - Allow better access to educational progress for year round residents.
  - Increase the ability for families to choose to live on their property year round
  - Improve access to this portion of the National Wildlife Refuge



# SCOPE OF WORK

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- The advisory task force recommends extending the Kenai Spur Highway extension to the end of subdivision near Point Possession
- Improvement of beach accesses, repair Lief Creek bridge, place and construct erosion control for bridges across Bill Besser Creek and Seven Egg Creek
- Expansion of road infrastructure to include staging areas for emergency vehicles and safe public egress
- Construction of more pull-outs in low visibility areas for road safety purposes

## PUBLIC NEED CONTINUED

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- Install, repair, maintain, upgrade and/or otherwise improve identified anadromous stream crossings
- Solid waste transfer facility installation near Otter Creek “staging pad” (presently the end of the new gravel extension)



# FINANCIAL NEEDS ESTIMATE

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- Total Estimated Amount = \$24,616,000

# FUNDING SOURCES

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- Bridge for Bill Besser Creek and 7 Egg Creek available through Kenai Peninsula Economic Development District (KPEDD) Executive Director, Tim Dillon
- Federal Government Infrastructure Funding
- State Capital Improvement Requests (DOT&PF)
- The Rural Surface Transportation Grant Program (RURAL)
- National Coastal Wetlands Conservation Grant Program
- Bureau of Land Management (BLM) Alaska Fuels Management and Community Fire Assistance
- See summary report for a full list of grant opportunities found.

# SUMMARY

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- There has been a history of community support for the current extension and we found that the community overwhelmingly supports additional expansion as described in our summary report.

Kenai Peninsula Borough  
North Road Extension Advisory Task Force

Summary Report

1. PUBLIC NEED:

- a. Residents and property owners within the Gray Cliff Subdivision and Moose Point Subdivision (GCS&MPS) have long requested improved safe access to their properties
- b. Property taxes have been collected on GCS and MPS parcels for 40 years with sub-standard and unsafe access to what the taxes are purposed for, e.g: fire and emergency services, road services, and community safety
- c. Access is currently limited to off-road vehicles (ORVs) and by foot. Access is limited by the season and time of day. Access is limited daily when property owners look to bypass some of the more impassable areas by traveling along the beach of Cook Inlet during periods of low tide and then traveling up Jacob's Ladder or near the MPS pig station. Beach access is used to avoid various areas of the Kenai Spur Highway (KSH) extension because of the wetland/swampy areas where ATVs can get stuck, especially past Otter Creek (end of improvement 2022). Access is limited seasonally when all-terrain vehicles (ATVs) or ORVs traverse through the wetlands, turning the areas into impassable mud holes, limiting consistent access to when the ground is frozen
- d. Emergency response to residents and property owners in the GCS&MPSs is limited to what can be accessed via ATVs, ORVs, and Helicopter Medevac. By completing the KSH extension, emergency response to residents, visitors and property owners in the GCS&MPSs will be greatly improved. Options for emergency staging areas will improve response capabilities for rescue, evacuation, and forest / wildland firefighting
- e. ORVs/ATVs are currently using the utility easement in close proximity to the high-pressure petroleum transmission pipelines (HPTP), this close proximity creates risk of an ORV/ATV losing control and crashing into the pipeline. Development of the KSH through GCS&MPS is necessary to mitigate risk of accidental impacts with the HPTP
- f. Environmental impacts of present egress to and from these subdivisions is severely damaging to several anadromous stream crossings, beach accesses, and road right of ways. Improvements to these crossings and beach accesses are immediately necessary to mitigate any further damage or erosion to the natural resources in the area
- g. Though there used to be 16 children in the MPS there are presently 2 school-aged children living in the MPS and 2 living in GCS. There are other families with young children who are looking to move into the area. Extending the KSH would allow better educational access to present and prospective children as well as encourage new families to move into and develop their properties

- h. There exists 1000's of acres of National Wildlife Refuge and 8000 plus acres of Borough land that becomes more accessible with an improved road through the area providing for increased access to recreational, sport, and commercial use of the region.

## 2. SCOPE OF WORK:

- a. Extending the KSH through GCS&MPS with a terminus as close to Point Possession as project funding will allow past Seven Egg Creek with a 24' wide road bed, with periodic pull outs OR a road bed matching the existing extension from Captain Cook Park
- b. Provide for human and environmental safety and health through improvement of beach accesses, repair Lief Creek bridge, place and construct erosion control for bridges across Bill Besser Creek and Seven Egg Creek
- c. Expansion of road infrastructure to include staging areas for emergency vehicles and safe public egress
- d. Construction of more pull-outs in low visibility areas for road safety purposes
- e. Other road improvements to ensure compliance with KPB Ord. 14.06 (Road Construction Standards)
- f. Install, repair, maintain, upgrade and/or otherwise improve identified anadromous stream crossings
- g. Solid waste transfer facility installation near Otter Creek "staging pad" (presently the end of the new gravel extension)

## 3. FINANCIAL NEEDS ANALYSIS:

### 3.1 Cost projections: Total Estimated Amount = \$24,616,000

- a. Developed road bed of 24' wide gravel with environmental barriers, culverts and erosion controls OR a road bed matching the existing extension from Captain Cook Park: ~ \$200.00 per linear foot (LF) or @ \$1,056,000 per mile Estimated LF / Miles of new road bed: @ 52,800 LF or 10 miles totaling \$10,560,000
- b. Develop an Environmental Assessment (EA) and Army Corps of Engineers (ACOE) permits sufficient to provide State Dept. of Transportation and Public Facilities (DOT&PF) with an engineered plan that will also maintain compliance with Federal Clean Water Act (FCWA). Estimated costs: \$2,000,000
- c. Develop improvements to beach accesses to allow safe public egress, avoid/improve pipeline crossings where practical or necessary, erosion mitigation, and environmental conservation. Estimated costs for permitting and development: \$2,000,000

- d. Develop improvements to the KSH extension to allow emergency vehicle staging areas to include helipads or other practical emergency & disaster preparedness response pads. Estimated costs: \$3,000,000
- e. Develop improvements to identified areas of environmental concern such as anadromous stream crossings, parallel traffic to streams and swamps, areas where pooling may cause road washouts, dust mitigation and ecological conservation of protected wildlife (eg. eagle nests, salmon spawning areas). Estimated costs: \$2,000,000
- f. Roadbed improvements ancillary to the main road to provide for more pull-outs to improve visibility and safety of passing vehicles year round. Estimated costs: Approx 1 mile (cumulatively) of road bed expansions / pull-outs: \$1,056,000
- g. Other improvements to main road extension that will more adequately ensure compliance with KPB Ord. 14.06, State & Federal road standards. Estimated costs: \$1,000,000
- h. Development of an unmanned solid waste transfer facility near Otter Creek staging area (currently the end of the improved KSH). Estimated costs: \$2,000,000
- i. Installation of signage designating staging areas, beach accesses named Jacob's Ladder, pig-trap, MP drive, Corky-Yaeger access, stream crossings, pipeline crossings, and other important ROW safety signage appropriate to SOA-DOT&PF regulations. Estimated costs: \$1,000,000

### **3.2 Funding Sources:**

- a. Bridge for Bill Besser Creek and 7 Egg Creek available through Kenai Peninsula Economic Development District (KPEDD) Executive Director, Tim Dillon
- b. Federal Government Infrastructure Funding
- c. State Capital Improvement Requests (DOT&PF)
- d. The Rural Surface Transportation Grant Program (RURAL)
- e. National Coastal Wetlands Conservation Grant Program
- f. Bureau of Land Management (BLM) Alaska Fuels Management and Community Fire Assistance
- g. Emergency Management Performance Grant Program (FEMA/DHS)
- h. Denali Commission Program Grants
- i. Surface Transportation Block Grant Program

- j. KPB in-kind donations such as ROW and gravel materials
- k. KPB direct capital allocations through ordinance or bonding
- l. KPB-FSAB or RSAB grants or other funding allocations
- m. River Center grants through KPB Ord. 21.18 or KPB Ord. 21.06
- n. Community partners interested in project development such as O&G firms, Native Corporations or Nations, private individuals or Trusts
- o. Environmental conservation groups interested in helping to preserve existing ecology and mitigate human impacts such as the Kenai Watershed Forum, Alaska DEC, or US / AK Dept. of Fish and Game
- p. Other sources as identified by future stakeholders such as new grant opportunities, cooperative plans with KPB Emergency and Disaster planning, cooperative plans with KPB Resilience and Security Advisory Commission

#### 4. COMMUNITY SUPPORT:

- a. History of public meetings and their outcomes
- b. Record of petition of interested parties in developing more land from the KPB land bank, in re: Point Possession
- c. Record of various government agencies over the years providing for support and funding of extending the KSH past Capt. Cook State Park
- d. Letters and comments from community organizations in support of extending the KSH such as KPEDD and the Nikiski Community Council
- e. Voting record of advisory boards, RSA board and KPB Assembly
- f. Public comments and feedback after mail-out and request for public surveys
- g. Letters from Don Young's US Congressional Office in support and previous and continued funding of extending the KSH
- h. Support from US Senators Murkowski and Sullivan regarding federal infrastructure funding for needed projects  
For instance: <https://www.murkowski.senate.gov/issues/issues-and-priorities/infrastructure>  
and <https://www.sullivan.senate.gov/newsroom/press-releases/sullivan-statement-on-bipartisan-infrastructure-package>

#### 5. TASK FORCE RECOMMENDATION: APPROVE PROJECT **Addendum - Pictures - References**





MPS - Pig Station / Beach Access / Helipad



Current beach access at Pig Station, Moose Point, vehicle to show angle

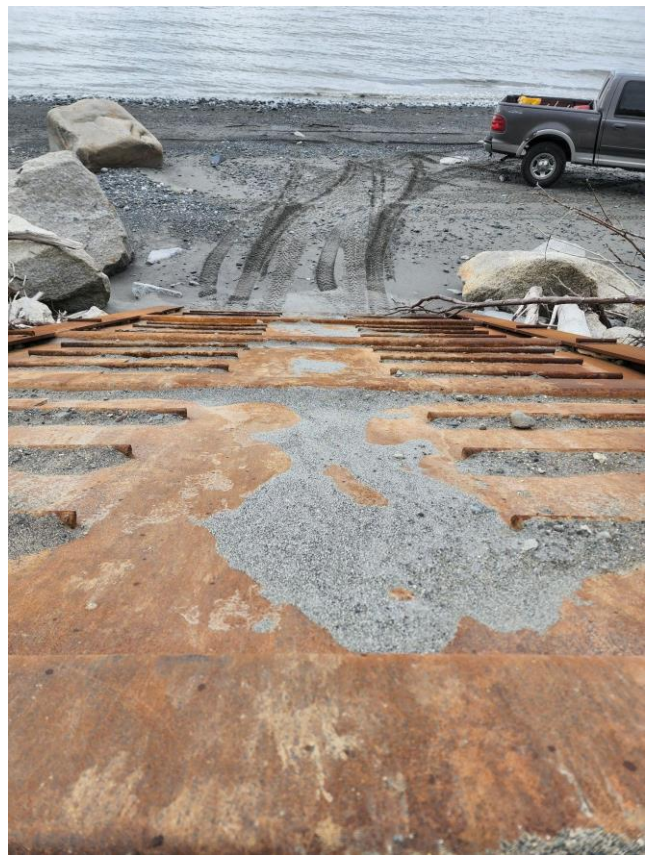


Top of current beach access at Pig Station, unsuitable for most vehicles





Current beach access at Pig Station, ramp is estimated 45° angle



Current beach access at Pig Station, looking down



Unnamed creek that floods current pipeline trail every winter, estimated 4-5 ft deep. Trail is unusable while this floods.



02543709



Lake that unnamed creek originates from, approximate area of flooding on the adjacent pipeline trail.





ATV swamped in unnamed creek from above.



Unnamed creek flooding, pipeline trail marker for depth reference



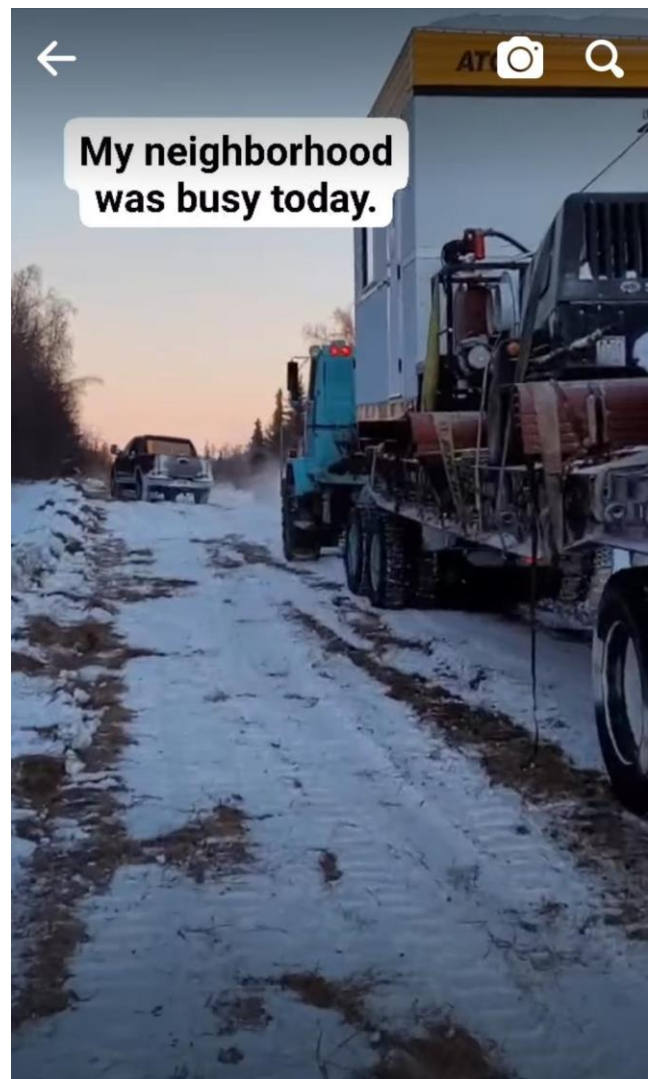
Pipeline trail at Besser Creek in summer, stuck atv



Snow machine rolled off small bridge at Besser Creek



Seven Egg Creek after a semi with equipment was driven across in December



My neighborhood was busy today.

Pipeline trail plowed by oil companies, semi and other large equipment driven to end of pipeline trail





# HOMER TRAILS ALLIANCE

*Stewarding a robust trail network  
for a connected community*

*To promote, maintain, and develop  
sustainable trails in the Homer  
area. North shore of Kachemak Bay  
from Anchor Point to Fox River.*



# HISTORY

In 2020, a group of organized and enthusiastic volunteers successfully coordinated with local landowners to reroute the Homestead Trail, establishing DNR public recreation easements. The trails were extended and improved with volunteer labor.

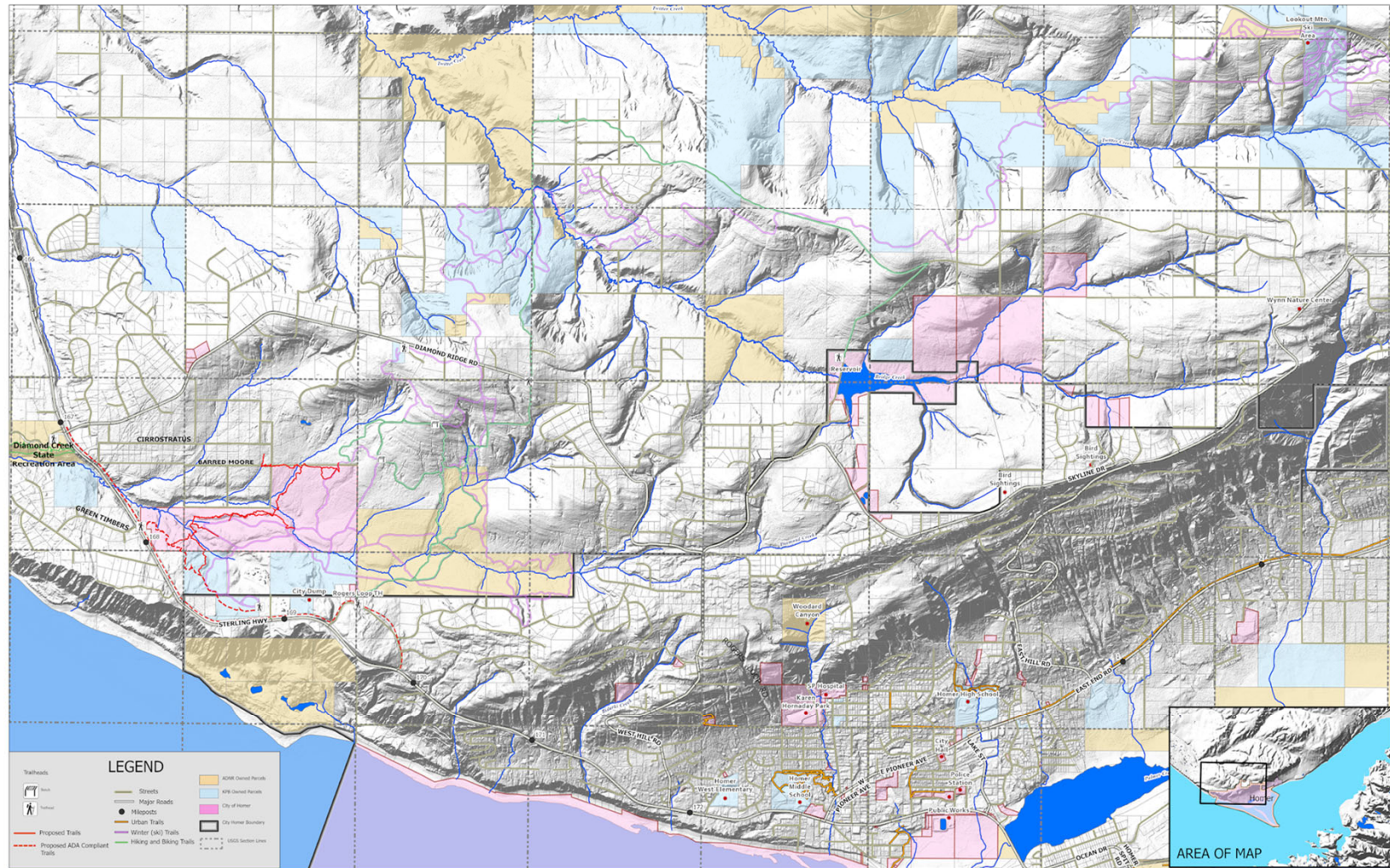


This diverse group has expertise in surveying, GIS mapping, building, and people with deep-rooted ownership and familiarity with the land. Thus, **Homer Trails Alliance, HTA**, was born.



In 2021, **Homer Trails Alliance. HTA**, became a 501(c)3 and now serves as advocate for trails on the north side of the bay, identifying, mapping, and connecting existing and future trails adding to the economic engine of the southern Kenai Peninsula.





**BAYCREST AREA-STREAMHILLS TRAILS  
CITY OF HOMER---VISIONING THE FUTURE  
OVERVIEW**



# ACCOMPLISHMENTS (in 2 short years...)



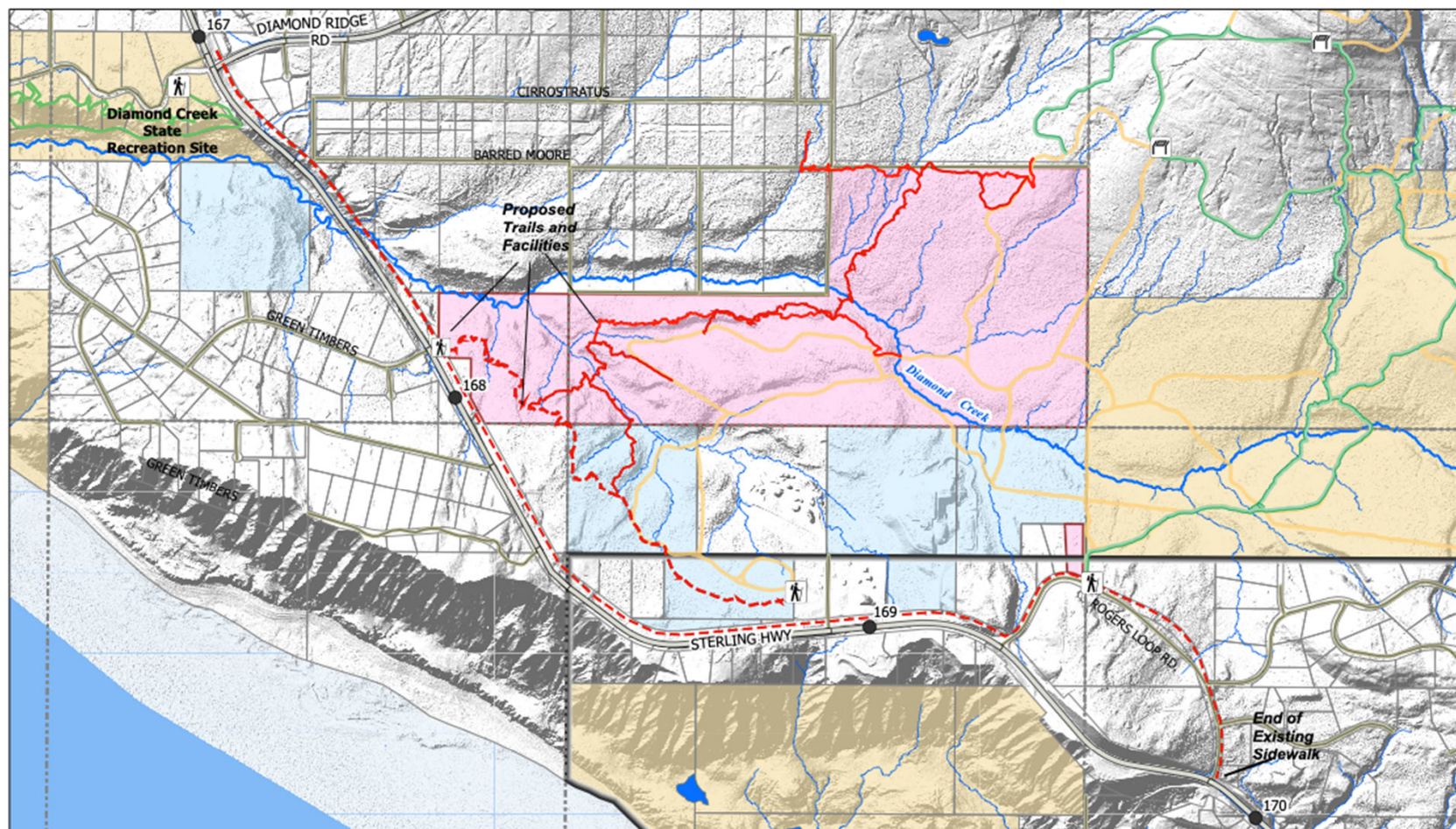
- Adopted oversight and maintenance of Homestead Trail. Have thus far installed bridges, signage, and improved muddy areas.
- Steering committee for Homestead Demonstration Forest
- Community events that include birding hikes, work parties, geocaching
- Clearinghouse for long-time landowners to identify & establish trail easements



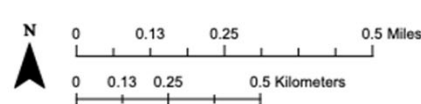
- FaceBook page that provides a real time public forum for trail updates and sightings
- Website (in process) that will include GIS maps, trail information, volunteer opportunities, events
- Track trail usage with counters







Data Sources: KPB parcels, roads, LIDAR 3D;  
 ANSC, BLM, HSE, etc. trails  
 ADNR: Parks, State trails  
 USGS: 2500 USGS, ADOPTAFY: roads  
 USGS: Streams, Lakes  
 Esri: World Imagery  
 HTA: Trails, NEK, etc. trails  
 Projection: Alaska State Plane Zone 4, NAD83  
 Date: 10/26/22  
 Map Author: C. Bennett, HTA



**WEST HOMER RECREATION PLANNING**



# CURRENT PROJECTS

*In June and July of this year the Rogers Loop Trailhead which includes the Homestead Trail, saw over 700 visitors per week!*

- *Constructing boardwalks & bridges along Homestead Trail*
- *Pursuing DOT grant connecting recreation areas*
- *Improving and establishing parking at trailheads*
- *Year round access to existing trails*
- *Access to over 1000 acres used for travel and recreation*
- *All ages and abilities loop*





# DOT PROJECT DETAILS



Connect Rogers Loop Trailhead to the Diamond Creek SRS including:

- Create a pathway adjacent to Sterling Hwy. between MP 169 & 167
- Establish and improve trailheads with bathrooms & parking
- Connect trails within the Baycrest Trail System with a focus on accessibility
- Connect Rogers Loop, Green Timbers and DCSRS to Homer business district

# HOMER TRAILS ALLIANCE



Introduced by:	Mayor
Date:	10/25/22
Hearing:	11/15/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-19-25**

**APPROPRIATING FUNDS TO THE LEGAL DEPARTMENT FOR LITIGATION FEES  
AND COSTS RELATED TO AN OIL AND GAS PROPERTY TAX APPEAL**

- WHEREAS,** on June 23, 2021, Furie Operating Alaska, LLC (“Furie”) filed an appeal in the Anchorage Superior Court of the State Assessment Review Board’s Certificate of Determination dated May 24, 2021, regarding Furie’s appeal of the assessed tax value of oil and gas production property within the borough for the 2021 assessment year (“Furie Appeal”);
- WHEREAS,** the assessment of oil and gas production property is a State of Alaska function under the State’s Department of Revenue;
- WHEREAS,** the Kenai Peninsula Borough (“Borough”) is a party to the appeal because the property is within the Borough’s boundaries; and
- WHEREAS,** the Borough retained the law firm of Dillon & Findley, PC to represent it in the Furie Appeal; and
- WHEREAS,** subsequently Furie appealed the 2022 assessed tax value of its oil and gas production property; and
- WHEREAS,** the Superior Court consolidated the 2021 and 2022 appeals into a single case; and
- WHEREAS,** this case involves complex legal and property valuations issues with numerous out-of-state experts; and
- WHEREAS,** the continuing services and expertise of Dillon & Findley will be needed to adequately represent the Borough’s interest in this matter; and
- WHEREAS,** it is estimated that at this time funds of at least \$225,000 will be needed to pay legal services and costs incurred by outside counsel on behalf of the borough;

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

**SECTION 1.** The sum of \$225,000 is hereby appropriated from the General Fund's fund balance to account number 100.11310.22FUR.49999 for expenses associated with hiring outside counsel and necessary experts for the Furie Appeal.

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

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

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

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Brent Johnson, Assembly President

ATTEST:

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Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:



# Kenai Peninsula Borough

## Legal Department

### MEMORANDUM

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

**THRU:** Mike Navarre, Mayor *MN*  
Brandi Harbaugh, Finance Director *BH*  
Adeena Wilcox, Assessing Director *AW*

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

**DATE:** October 13, 2022

**RE:** Ordinance 2022-19-25, Appropriating Funds to the Legal Department for Litigation Fees and Costs Related to an Oil and Gas Property Tax Appeal (Mayor)

On June 23, 2021, Furie Operating Alaska, LLC (Furie), the owner of oil and gas production property, filed an appeal of the State Assessment Review Board's (SARB) Certificate of Determination dated May 24, 2021, in the Anchorage Superior Court. The SARB decision upheld the State of Alaska's assessment of the oil and gas production property under appeal.

The assessment of oil and gas production property is a State of Alaska function under the State's Department of Revenue. The Kenai Peninsula Borough (Borough) is a party to the appeal because the property is within the Borough's boundaries. The Borough retained the law firm of Dillon & Findley, PC to represent it in the Furie Appeal. Subsequently, Furie appealed the 2022 assessed tax value of its oil and gas production property. A second SARB decision upheld the 2022 assessment. The Superior Court consolidated the 2021 and 2022 appeals into a single case.

Ordinance 2021-19-06 appropriated \$150,000 for legal fees and costs to protect the borough's interests in this appeal. To date, approximately \$102,903 has been expended in this matter on the borough's behalf. It is estimated that up to an additional \$225,000 may be required to litigate this matter through the trial scheduled for July 2023. This appropriation would include fees and costs associated with the upcoming trial, including expert witness fees.

The approximate annual oil and gas production tax that KPB receives from the Furie property is \$822,991.35.

Your consideration of the ordinance is appreciated.

#### FINANCE DEPARTMENT ACCOUNT / FUNDS VERIFIED

Acct. No. 100.27910

Amount: \$225,000.00

By: *CK* Date: 10/13/2022

Introduced by:	Mayor
Date:	10/11/22
Hearing:	11/15/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-42**

**APPROVING THE 2023 ASSET ALLOCATION FOR THE LAND TRUST INVESTMENT  
FUND INVESTMENTS AND AMENDING KPB 5.10.200(B) TO UPDATE AND ADD NEW  
SUBSECTIONS UNDER AUTHORIZED INVESTMENTS**

**WHEREAS,** pursuant to KPB 5.10.200(B) the financial asset investments of the Land Trust Investment Fund (“LTIF”) must be approved annually; and

**WHEREAS,** the asset allocation plan must specify categories of investments for the fund with percentage targets that allow for reasonable fluctuations above and below the target performance; and

**WHEREAS,** Alaska Permanent Capital Management (“APCM”), the Borough’s Land Trust Fund Investment Manager, is not recommending changes to the current asset allocation for calendar year 2023; and

**WHEREAS,** APCM recommends changes to KPB 5.10.200(B) to update indices that are currently being utilized in management of the LTIF investment portfolio;

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

**SECTION 1.** That KPB 5.10.200(B) is hereby amended to update subsections 7 and 9 and to add two new subsections, 12 and 13, to read as follows:

**5.10.200. –Authorized Investments for the Land Trust Investment Fund.**

B. Authorized Investments—Financial Assets. Moneys in the Land Trust Investment Fund shall be invested only in the following instruments and subject to the applicable limitations and requirements

...

7. International equities, which taken as a whole, attempt to replicate the MSCI EAFE Index or another index of similar characteristics, including both mutual funds and exchange traded funds (ETFs).



8. Equities, which taken as a whole, attempt to replicate the universe of domestic real estate investment trusts as represented by the Standard and Poor's REIT composite index or another index of similar characteristics including both mutual funds and exchange traded funds (ETFs).
9. Emerging market equities, which taken as a whole, attempt to replicate the MSCI Emerging Markets Index or another index of similar characteristics including both mutual funds and exchange traded funds (ETFs).
- ....
12. Implementation strategies, which taken as whole, attempt to replicate the Wilshire Liquid Alternatives Index or another index of similar characteristics including both mutual funds and exchange traded funds (ETFs).
13. U.S. high yield bonds, which taken as a whole, attempt to replicate the Bloomberg Barclays U.S. Corporate High Yield Very Liquid Index or another index of similar characteristics including both mutual funds and exchange traded funds (ETFs).

**SECTION 2.** This ordinance shall become effective immediately upon 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

## Finance Department

### MEMORANDUM

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

**THRU:** Mike Navarre, Mayor *MN*

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

**DATE:** October 11, 2022

**RE:** Ordinance 2022-42, Approving the 2023 Asset Allocation for the Land Trust Investment Fund Investments and Amending KPB Code 5.10.200(B) to Update and Add New Subsections Under Authorized Investments (Mayor)

Pursuant to KPB 5.10.200(A)(2) the financial asset investments of the Land Trust Investment Fund (LTIF) are approved annually by resolution. The asset allocation plan must specify categories of investments for the fund with percentage targets that allow for reasonable fluctuations above and below the target performance. Alaska Permanent Capital Management (APCM), the Borough's Land Trust Fund Investment Manager, is not recommending changes to the current asset allocation for calendar year 2023. The current allocation is as follows:

Asset Class	Strategic Weight	Current Weight	Range
<b>Risk Control</b>	<b>27.00%</b>	<b>27.70%</b>	
US Fixed Income	18.00%	16.50%	8 - 28%
TIPS	2.00%	2.20%	0 - 10%
International Bonds	5.00%	4.50%	0 - 10%
Cash	2.00%	4.50%	0 - 10%
<b>Risk Assets</b>	<b>52.00%</b>	<b>50.00%</b>	
High Yield	5.00%	5.00%	0 - 10%
US Large Cap	22.00%	21.50%	12 - 32%
US Mid Cap	10.00%	9.30%	5 - 15%
US Small Cap	5.00%	4.70%	0 - 10%

Page -2-  
 October 11, 2022  
 Re: O2022-42

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International Equity	6.00%	5.60%	0 - 12%
Emerging Markets	4.00%	3.90%	0 - 8%
<b>Alternatives</b>	<b>21.00%</b>	<b>22.30%</b>	
Real Estate	3.00%	2.70%	0 - 6%
Infrastructure	5.00%	4.90%	0 - 10%
Commodities	3.00%	3.00%	0 - 6%
Alternative Beta	10.00%	11.70%	0 - 15%

APCM recommends the below updates to KPB 5.10.200(B) to update indices that are that are currently being utilized in management of the LTIF investment portfolio.

The code changes will update KPB 5.10.200(B) subsections 7 and 9, and add two new subsections, numbered 12 and 13, as follows:

7. International equities, which taken as a whole, attempt to replicate the MSCI EAFE Index or another index of similar characteristics, including both mutual funds and exchange traded funds (ETFs).
9. Emerging market equities, which taken as a whole, attempt to replicate the MSCI Emerging Markets Index or another index of similar characteristics including both mutual funds and exchange traded funds (ETFs).
- ...
12. Implementation strategies, which taken as whole, attempt to replicate the Wilshire Liquid Alternatives Index or another index of similar characteristics including both mutual funds and exchange traded funds (ETFs).
13. U.S. high yield bonds, which taken as a whole, attempt to replicate the Bloomberg Barclays U.S. Corporate High Yield Very Liquid Index or another index of similar characteristics including both mutual funds and exchange traded funds (ETFs).

Your consideration of the ordinance is appreciated.

Introduced by:  
Date:  
Action:  
Vote:

Mayor  
11/15/22

**KENAI PENINSULA BOROUGH  
RESOLUTION 2022-056**

**A RESOLUTION AUTHORIZING THE ACQUISITION BY DONATION OF THREE  
LOTS OF LAND LOCATED IN THE SEWARD AREA ON BEHALF OF THE SEWARD  
BEAR CREEK FLOOD SERVICE AREA**

**WHEREAS,** the Seward Bear Creek Flood Service Area (“SBCFSA”) provides for flood planning and mitigation within the SBCFSA; and

**WHEREAS,** the record owner of two tax parcels of land within the SBCFSA boundary has offered to donate the parcels to the Kenai Peninsula Borough (“Borough”) for floodplain conservation and mitigation purposes; and

**WHEREAS,** the two tax parcels, containing three lots and approximately 1.4 acres, are located in the Resurrection River historic braid plain east of the Seward Airport and in close proximity to other Borough land managed for floodplain purposes; and

**WHEREAS,** the acquisition and management of this land for floodplain values would further Objective D, Strategy 2 of the Kenai Peninsula Borough Comprehensive Plan; and

**WHEREAS,** the land is vacant and unimproved with a combined current assessed value of \$2,000.00; and

**WHEREAS,** the SBFCFA board at its meeting of September 20, 2021, recommended approval of the subject acquisition; and

**WHEREAS,** the KPB Planning Commission, at its regularly scheduled meeting of November 14, 2022, recommended \_\_\_\_\_ ;

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

**SECTION 1.** That the acquisition of the following described real property on behalf of the SBCFSA is in the best interest of the Borough:

Lots 3 and 4, Tract A, Crawford Subdivision, according to Plat S-15, filed in the Seward Recording District, Third Judicial District, State of Alaska.  
(PARCEL NO. 145-093-06)

AND

Lot 2, Riverside Subdivision, according to Plat S-16, filed in the Seward Recording District, Third Judicial District, State of Alaska.  
(PARCEL NO. 145-093-01)

**SECTION 2.** Parcels referenced will be conveyed through a deed to the Borough and upon donation the parcels will be considered a land asset of the SBCFSA.

**SECTION 3.** That the terms and conditions substantially in the form of the Purchase Agreement accompanying this resolution are hereby approved. The purchase price shall be one dollar (\$1.00) plus title research and due diligence fees not to exceed eight hundred dollars (\$800.00).

**SECTION 4.** That the costs of the acquisition will come from Seward Bear Creek Flood Service Area FY23 budgeted funds.

**SECTION 5.** That this acquisition is for flood mitigation purposes.

**SECTION 6.** That the proposed classification of this land is Preservation and Resource Management.

**SECTION 7.** That the mayor is authorized to execute any and all documents necessary to purchase the real property described in Section 1 in accordance with the terms and conditions contained in this resolution and the accompanying Purchase Agreement, consistent with applicable provisions of KPB Chapter 17.10.

**SECTION 8.** That this resolution is effective immediately upon adoption.

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

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Brent Johnson, Assembly President

ATTEST:

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Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

# Kenai Peninsula Borough

## Planning Department – Land Management Division

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### MEMORANDUM

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

**THRU:** Mike Navarre, Mayor *MN*  
Brandi Harbaugh, Finance Director *BH*  
Robert Ruffner, Planning Director *SLFR*  
Marcus Mueller, Land Management Officer *mam*  
Stephanie Presley, SBCFSA Program Lead *SP*

**FROM:** Aaron Hughes, Land Management Agent *AH*

**DATE:** November 3, 2022

**RE:** Resolution 2022-056, Authorizing the Acquisition by Donation of Three Lots of Land Located in the Seward Area on Behalf of the Seward Bear Creek Flood Service Area (Mayor)

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The Seward Bear Creek Flood Service Area ("SBCFSA") provides for flood planning and mitigation. A property owner has offered to donate two tax parcels consisting of three lots (1.4 Acres Total) that are within the Resurrection River historic braid plain to the Borough for conservation purposes. The SBCFSA recommended acquisition of the property to be used for conservation and possible future flood mitigation.

This acquisition would further the Borough Comprehensive Plan Land Use Objective D: "Maintain quality of the borough's natural environment, including protecting visual quality, minimizing development in hazardous areas, and developing strategies that help reduce and respond to impacts of changing environmental conditions. Strategy 2. Identify and protect the critical natural systems of the Kenai Peninsula Borough, its rivers, watersheds, floodplains and fish and wildlife habitats and resources."

The SBCFSA would be responsible for the costs associated with the acquisition including title insurance, and any closing related costs.

Your consideration of the resolution is appreciated.



Kenai Peninsula Borough, State of Alaska  
SateGraph, ME11/NASA, US  
AH 10/18/2022

0 175 350 700 Feet

N

RIVERSIDE DR  
BOUNDARY AVE  
B ST  
SHARON AVE  
DIMAH ST  
DARRELL ST  
COTTONWOOD LN  
DAVID AVE

 Morrison Parcels

 Tax Parcels



**PERSONAL REPRESENTATIVE'S DEED**

Grantor, Jodi E. Morrison, Personal Representative of the Estate of Margaret C. Estes, of 3783 Kamp Drive, Pleasanton, California 94588, for and in consideration of Ten Dollars in hand paid, hereby conveys and transfers, without warranties of any kind, to Grantee, Jodi E. Morrison of 3783 Kamp Drive, Pleasanton, California 94588, all of the right, title and interest held by Margaret C. Estes at the time of death in the following:

**Parcel 1.** Lots 3 & 4, Tract A, CRAWFORD SUBDIVISION, according to Plat S-15, filed in the Seward Recording District, Third Judicial District, State of Alaska

**Parcel 2.** Lot 2, RIVERSIDE SUBDIVISION, according to Plat S-16, filed in the Seward Recording District, Third Judicial District, State of Alaska

**Parcel 3.** Lots 5 & 6 Block 1, TERN LAKE ESTATES, according to Plat S-71, filed in the Seward Recording District, Third Judicial District, State of Alaska

Grantor represents that:

1. Grantor is the lawfully appointed Personal Representative of the Estate of Margaret C. Estes.
2. Grantor has not done or suffered any act since Grantor became Personal Representative whereby the above-described property became or will become encumbered in any manner.



DATED this 12 day of July, 2003.

Jodi E. Morrison  
Jodi E. Morrison,  
Personal Representative of the  
Estate of Margaret C. Estes

001409  
SEWARD  
RECORDING DISTRICT  
1802

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ALAMEDA)

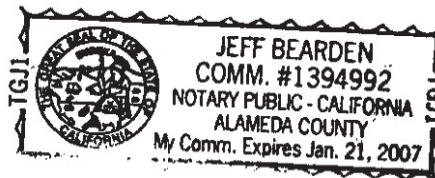
THIS IS TO CERTIFY that on the 12 day of July, 2003, before me, the undersigned, a Notary Public in and for the State of California, duly commissioned and sworn, personally appeared Jodi E. Morrison, to me known and known to me to be the individual named in and who executed the within and foregoing Personal Representative's Deed, and acknowledged to me that signed and sealed the same as free and voluntary act and deed, for the uses and purposes therein specified.

2003 JUL 23 P 1:28  
REQUESTED BY

WITNESS my hand and notarial seal hereto affixed the day and year first hereinabove written.

[Signature]  
Notary Public in and for the State of California  
My commission expires: Jan 21, 2007

**Return to:**  
Jodi E. Morrison  
3783 Kamp Drive  
Pleasanton, California 94588



## **PURCHASE AGREEMENT**

This Purchase Agreement ("Agreement") is made by and between JODI E. MORRISON, as seller, whose address is 1850 Ingram Way, Petaluma, CA 94954, ("Seller") and the KENAI PENINSULA BOROUGH, an Alaska municipal corporation, as buyer, whose address is 144 North Binkley Street, Soldotna, Alaska 99669 ("KPB") (together, the "Parties").

WHEREAS, Seller is the owner of that real property located in the Seward Recording District, Third Judicial District, State of Alaska, and more particularly described as follows:

Lots 3 and 4, Tract A, Crawford Subdivision, according to Plat S-15, filed in the Seward Recording District, Third Judicial District, State of Alaska.  
(PARCEL NO. 145-093-06)

AND

Lot 2, Riverside Subdivision, according to Plat S-16, filed in the Seward Recording District, Third Judicial District, State of Alaska.  
(PARCEL NO. 145-093-01)

("the Property")

WHEREAS, KPB has offered to buy, and Seller is willing to sell the Property as evidenced by this Agreement; and

NOW THEREFORE, in consideration of the conditional promises herein contained, Seller hereby agrees to sell to KPB, and KPB hereby agrees to buy from Seller, the Property on the terms and conditions as set forth below:

1. PURCHASE PRICE

The purchase price of the Property is One Dollar and NO cents (\$1.00). The purchase price shall be paid by KPB at time of closing. The purchase of the Property and appropriation for the purchase are subject to approval by the KPB Assembly.

2. EXPIRATION OF OFFER

Seller shall sign and return this Agreement to KPB on or before **October 14, 2022**; otherwise, this offer shall terminate.

3. TITLE

Title shall be delivered at time of closing by statutory warranty deed, which shall be issued to KPB. Seller shall warrant and covenant that at the time of closing there **shall be** no liens or

judgments recorded against Seller in the same recording district in which the Property subject to this Agreement is situated. Title shall be clear of liens and encumbrances except title is subject to reservations, easements, rights-of-way, covenants, conditions and restrictions of record as agreed to by KPB.

#### 4. ESCROW AND CLOSING COSTS

Except as described in this Section, in addition to the purchase price, KPB agrees to pay for closing costs, title insurance and recording fees up to \$800.00. Any and all closing fees in excess of this amount shall be the responsibility of the Seller. Property taxes for the current year, if any, will be paid current to the date of closing. Seller is responsible for realtor's commission, if any; all unpaid taxes for prior years, if any; and all unpaid outstanding assessments, if any. All costs will be paid in full at the time of closing.

#### 5. CLOSING

Unless otherwise agreed in writing, closing will occur within 180 days, or as specifically agreed to by both parties. At closing, KPB will pay the balance of the purchase price. Both parties will execute all documents required to complete the Agreement and, if applicable, establish an escrow account.

#### 6. POSSESSION

Possession shall be delivered to KPB at time of recording unless otherwise agreed to in writing by the Parties.

#### 7. KENAI PENINSULA BOROUGH ASSEMBLY APPROVAL

Purchase of the Property by KPB is subject to authorization by the KPB Assembly and specific appropriation of funds. If the KPB Assembly fails to authorize the purchase of the subject land and appropriate funds, this Agreement shall be terminated without penalty.

#### 8. DISCLOSURES

Seller hereby agrees to provide property disclosures including any and all information regarding known defects, deficiencies, legal matters, environmental issues or hazards, which may be personally known by the Seller, in writing. If said disclosure presents a matter unsatisfactory to KPB, KPB may terminate this Agreement without penalty.

#### 9. CONTINGENT UPON INSPECTION

This offer and Agreement are contingent upon the completion of a property inspection satisfactory to KPB for its use and at KPB's expense. Seller shall, upon reasonable notice, provide access to the Property for inspection purposes to KPB and its representatives. Any invasive inspection procedures require Seller's express permission and shall be promptly repaired or replaced by KPB in a workmanlike manner. KPB shall have 180 days from the execution of this Agreement to complete inspections and determine its satisfaction unless otherwise provided in writing.

#### 10. HAZARDOUS MATERIAL

Seller covenants to the best of Seller knowledge, that as of the date of this Agreement, except as specifically identified herein, the Property is free of all contamination from petroleum products or any hazardous substance or hazardous waste, as defined by applicable state or federal law, and there are no underground storage tanks or associated piping on the Property. Seller agrees that no hazardous substances or wastes will be located on or stored on the Property; nor any adjacent property owned or leased by the Seller, owner or contractors; nor shall any such substance be owned, stored, used, or disposed of on the Property or any adjacent property by Seller, its agents, employees, contractors, or invitees prior to KPBS ownership, possession, or control of the Property.

#### 11. ENVIRONMENTAL CONTINGENCY

If, during the course of KPBS due diligence inspection of the Property pursuant to Section 9, KPBS discovers the presence of environmental hazards on or released from the Property in any quantity or concentration exceeding the limits allowed by applicable law, or that are deemed undesirable by KPBS, KPBS will have the right to give notice to Seller, accompanied by a copy or copies of the third-party report(s) disclosing and confirming the presence of such hazardous materials. The notice and accompanying third-party report must be given no later than 60 days from receipt of said report. The notice under this section shall state:

- (i) That KPBS is terminating this Agreement due to the presence of such hazardous materials on or adversely affecting the Property; or
- (ii) Provide Seller 30 days from notice to provide a mitigation plan outlining steps taken by Seller to remedy said hazards to KPBS's satisfaction at Seller's expense.

Following KPBS sending the notice and report described in this Section, the Parties may negotiate other resolutions as may be agreeable to the Parties in writing to be included as a part of this Agreement. In the event the Parties cannot agree in writing on a resolution to remedy any environmental concerns within 90 days of the notice, this Agreement shall automatically terminate.

It is expressly understood that, by execution of this Agreement, Seller hereby indemnifies KPBS for any and all CERCLA-related claims, liabilities or matters, unless otherwise provided for in this Agreement. Said indemnification shall survive closing and termination of this Agreement. Upon successful close of escrow said indemnification shall continue for a period of not less than 12 months, from the date of closing unless otherwise provided for in this Agreement.

If this Agreement is terminated pursuant to any report detailing environmental conditions that may or may not exist on the Property, such report(s) shall remain confidential and proprietary. The report(s) will be marked as confidential and will not be released to a private individual, entity, or non-profit without express agreement of the Parties hereto. Notwithstanding, the report will be released pursuant to a valid court order and may be released to the State of Alaska upon request.

## 12. ENTIRE AGREEMENT

This Agreement and the documents referred to herein contain the entire agreement of the parties with respect to the subject matter hereof. Any changes, additions or deletions hereto must be made in writing and signed by both KPB and Seller or their respective successors in interest. Provisions of this Agreement, unless inapplicable on their face, shall be covenants constituting terms and conditions of the sale, and shall continue in full force and effect until the purchase price is paid in full or this Agreement is earlier terminated.

## 13. BREACH REMEDY

Prior to closing of the sale, in the event that KPB or Seller fails to make any payment required, or fails to submit or execute any and all documents and papers necessary for closing and transfer of title within the time period specified in this Agreement, the Sellers or KPB may terminate this Agreement.

## 14. MISCELLANEOUS

- A. Time. Time is of the essence in performance of this Agreement.
- B. Cancellation. This Agreement, while in good standing, may be canceled in whole or in part, at any time, upon mutual written agreement by Seller and the KPB mayor. This Agreement is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts. KPB may cancel this Agreement without penalty in the event additional contracts required of this project are not secured.
- C. Notice. Any notice or demand, which under the terms of this Agreement or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other Party at the address shown on the contract. However, either Party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.
- D. Interpretation. This Agreement shall be deemed to have been jointly drafted by the Parties. It shall be construed according to the fair intent of the language as a whole, not for or against either Party. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of Alaska. Any lawsuit brought arising from this Agreement shall be filed in the court of the Third Judicial District, State of Alaska, located in the City of Homer, Alaska.. The titles of sections in this Agreement are not to be construed as limitations of definitions but are for identification purposes only.
- E. Condition of Property. Seller shall deliver the Property in its as-is condition.
- F. Confidentiality. This Agreement shall be considered proprietary to the Parties until closing occurs. Following closing, this Agreement may be considered a public record.

- G. Counterparts. This Agreement may be executed in counterpart, and may be executed by way of copy, facsimile or verified electronic signature in compliance with AS 09.80, and if so, each of which shall be deemed an original but all of which together will constitute one and the same instrument

This Agreement has been executed by the Parties on the day and year first above written.

KENAI PENINSULA BOROUGH:

SELLER:

\_\_\_\_\_  
Mike Navarre, Mayor

*Jodi E. Morrison* 10/5/2022  
\_\_\_\_\_  
Jodi E. Morrison

ATTEST:

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

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

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

Introduced by: Johnson  
Date: 11/15/22  
Action:  
Vote:

**KENAI PENINSULA BOROUGH  
RESOLUTION 2022-057**

**A RESOLUTION SUPPORTING PRIVATELY OWNED BOAT TAKE-OUTS ON THE  
LOWER KASILOF RIVER**

**WHEREAS,** Dan Murphy opened a drift boat take-out on the lower Kasilof River about 2001; and

**WHEREAS,** Jeanne Maltby begin operating Murphy's boat-take out in 2002; and

**WHEREAS,** Steve and Jeanne Maltby (the "Maltbys") bought Murphy's property in 2004 and opened Kasilof River Lodge and Cabins, which included operation of the boat take-out; and

**WHEREAS,** Steve Maltby is a mechanical engineer and has made improvements in the boat take-out system; and

**WHEREAS,** the Maltby boat take-out has an excellent safety record; and

**WHEREAS,** Maltbys proposed an Alaska Department of Fish and Game regulation change. The change allowed drift boats to have an outboard of ten horsepower, or less. And to use the outboard once fishing ceases. Drift boats typically motor from the Old Kasilof Landing (about river mile 3.8) to Maltby's Landing (about river mile 1.5; and

**WHEREAS,** in 2022 Maltbys charged \$30 per take-out; and

**WHEREAS,** Maltbys operate their boat take-out from mid-May to mid-September, making it available to everyone; and

**WHEREAS,** the modest price of a take-out and the lack of competition indicates that opening additional take-outs will jeopardize the one now in operation; and

**WHEREAS,** two other drift boat take-outs have operated on the lower Kasilof River. (1) At Cohoe Cove (new owners bought the property and closed that take-out in 2008 to the public), (2) at Old Kasilof Landing (at the site established by fox farmer and big game guide Al Hardy and his wife, Alice, in 1926. It closed when Jim Trujillo sold the property to the State of Alaska in 2015); and

**WHEREAS,** Alaska State Parks bought the Truijillo property and plans on developing a drift lower Kasilof River boat take-out there, at the Old Kasilof Landing; and

**WHEREAS,** that a State Parks operated boat take-out at the Old Kasilof Landing will directly compete with the private boat take-out operated by Maltbys; and

**WHEREAS,** the former Truijillo property that State Parks now owns has road access by only two roads—Satori Way or Old Kasilof Road; and

**WHEREAS,** the residents in the subdivisions connected to Satori Way and Old Kasilof Road, including residents of Tallgrass Avenue and Williamson Lane, are unanimously opposed to State Parks developing a boat take-out at the Old Kasilof Landing; and

**WHEREAS,** Mayor Navarre wrote a letter to the Alaska Department of Natural Resources Commissioner in January 2017 citing concerns the Kenai Peninsula Borough has regarding Alaska State Parks opening a boat take-out at the Old Kasilof Landing. It is now nearly six years later and those concerns are still pertinent;

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

**SECTION 1.** That the Kenai Peninsula Borough supports private boat take-out facilities on the lower Kasilof River and opposes government owned boat take-out facilities on the lower Kasilof River.

**SECTION 2.** That the Kenai Peninsula Borough recognizes a State-owned boat take-out facility at the Old Kasilof Landing will have negative impacts to the residents living in Coal Creek Country Estates and possibly negative impacts on Borough tax revenues due to State competition with private enterprise.

**SECTION 3.** That a copy of this resolution will be sent to State legislators representing the Kenai Peninsula region, State Parks Director Ricky Gease, and Superintendent of Kenai Peninsula and Prince William Sound State Parks, Jack Blackwell.

**SECTION 4.** That this resolution takes effect immediately.



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

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Brent Johnson, Assembly President

ATTEST:

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Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

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

**DATE:** November 3, 2022

**SUBJECT:** Resolution 2022-057, Supporting Privately Owned Boat Take-Outs on the Lower Kasilof River (Johnson)

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Alaska State Parks purchased the Old Kasilof Landing from Jim Trujillo in 2015, planning to open a drift boat take-out in the location where Trujillo previously operated his boat take-out. Residents in that neighborhood unanimously oppose those plans.

Meanwhile, Steve and Jeanne Maltby have operated a boat take-out a couple miles farther downriver since buying it in 2004. They charge \$30 per take-out, welcome any user, and have an excellent safety record ("perfect safety record," Jeanne Maltby told me). Safety is important because someone was killed a dozen years ago taking a boat out of the lower Kasilof River. That happened at a place where drift boat users rigged up an unprofessional boat take-out device.

If Alaska State Parks opens a boat take-out at the Old Kasilof Landing, three things are certain: (1) Maltby's business will suffer; (2) Residents of Coal Creek Country Estates Subdivision will also suffer; and (3) the State of Alaska will spend a considerable sum to build a good boat-take-out. It's my contention that the State should avoid competing with private enterprise and that these detriments aren't worth the benefits that lower Kasilof River boaters will receive from the proposed project.

Your consideration is appreciated.

Introduced by:	Mayor
Date:	11/15/22
Hearing:	12/13/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-19-26**

**AN ORDINANCE ACCEPTING AND APPROPRIATING THE “YEAR TWO” OPIOID  
SETTLEMENT FUNDS DISTRIBUTED THROUGH THE STATE OF ALASKA**

**WHEREAS,** in 2021, the State of Alaska (“State”) and nine political subdivisions within the State, including the Kenai Peninsula Borough (“Borough”) signed on to two nationwide settlement agreements related to the opioid endemic (“opioid settlements”); and

**WHEREAS,** Ordinance 2021-19-50 established a grant program to distribute the opioid settlement funds in accordance with parameters set by the opioid settlements; and

**WHEREAS,** per the opioid settlements, funds will be distributed through the State over the course of 18 years; and

**WHEREAS,** the settlement funds that the Borough will receive for its “year two” distribution amount is \$30,653.98; and

**WHEREAS,** this ordinance appropriates \$30,653.98 as received for the purposes outlined in opioid settlements and the Ordinance 2021-19-50; and

**WHEREAS,** the Assembly finds that it is in the best interest of the Kenai Peninsula Borough to accept and appropriate, on a project basis, the opioid settlement funds for the Opioid Settlement Fund Grant program;

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

**SECTION 1.** The amount of \$30,653.98 is appropriated to account 271.94910.OPD23.49999 for use for the Opioid Settlement Fund Grant Program established by Ordinance 2021-19-50.

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

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

---

Brent Johnson, Assembly President

ATTEST:

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:** Mike Navarre, Mayor *MN*  
Brandi Harbaugh, Finance Director *BH*

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

**DATE:** November 3, 2022

**RE:** Ordinance 2022-19-26, Accepting and Appropriating the "Year Two" Opioid Settlement Funds Distributed Through the State of Alaska (Mayor)

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In 2021, the State of Alaska and nine political subdivisions within the State, including the Kenai Peninsula Borough ("Borough") agreed to and entered into two nationwide settlement agreements related to the opioid endemic ("opioid settlements").

Ordinance 2021-19-50 established Borough an Opioid Settlement Fund Grant Program to administer and distribute funds received through the opioid settlements and in accordance with the requirements of the settlement agreements. The Kenai Peninsula Borough has received \$30,653.98 for the "year two" distribution amount.

Your support of the ordinance is appreciated.

FINANCE DEPARTMENT  
FUNDS/ACCOUNT VERIFIED

Acct. No. 271.94910.OPD23.49999

Amc 10,653.98

By: *cg*            Date: 11/2/2022



Introduced by:	Mayor
Date:	11/15/22
Hearing:	12/13/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-19-27**

**AN ORDINANCE ACCEPTING AND APPROPRIATING GRANT FUNDS OF \$150,000  
FOR THE KENAI PENINSULA BOROUGH FISH PASSAGE PROJECT,  
A PARTNERSHIP BETWEEN THE KENAI PENINSULA BOROUGH AND THE U.S.  
FISH & WILDLIFE SERVICE**

- WHEREAS,** the Kenai Peninsula Borough (“Borough”) and the U.S. Fish & Wildlife Service have entered into a partnership that will result in planning, prioritizing, conceptual designs, and stakeholder meetings in support of improving fish passages within the Kenai Peninsula Road Service Area (“RSA”); and
- WHEREAS,** the funds issued will have a small in-kind match requirement of \$5,500, \$5,000 of which will be personnel and personnel related costs, and \$500 of which will be travel related costs; and
- WHEREAS,** the funds have been verified and are available within the RSA budget; and
- WHEREAS,** the project, once complete, will assist with funding to repair and replace fish passages in the Borough and within the RSA utilizing grant opportunities; and
- WHEREAS,** there is a need for repair and replacement of fish passages throughout the Borough, which this study will help to identify and prioritize which passages should be repaired and replaced first;

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

- SECTION 1.** 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.** The amount of \$150,000.00 received from the U.S. Fish & Wildlife, through the Fish and Wildlife Coordination Act Cooperation of Agencies (16 U.S.C 661) be appropriated to account 236.33950.23PAS.49999 for the Road Service Area Fish Passage Partnership Project.
- SECTION 3.** That the in-kind match funds will be provided through previously appropriated funds in the Road Service Area Operating Fund.

**SECTION 4.** That appropriations made in this ordinance section 2 are project length in nature and as such do not lapse at the end of any particular fiscal year.

**SECTION 5.** That upon enactment this ordinance is effective retroactive to August 25, 2022.

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

---

Brent Johnson, Assembly President

ATTEST:

Yes:

No:

Absent:

# Kenai Peninsula Borough

## Community & Fiscal Projects

### MEMORANDUM

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

**THRU:** Mike Navarre, Mayor *MN*  
Brandi Harbaugh, Finance Director *BH*  
Dil Uhlin, Roads Director *DU*

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

**DATE:** November 3, 2022

**RE:** Ordinance 2022-19-27, Accepting and Appropriating Grant Funds of \$150,000 for the Kenai Peninsula Borough Fish Passage Project, a Partnership between the Kenai Peninsula Borough and the U.S. Fish & Wildlife Service (Mayor)

The Kenai Peninsula Borough (KPB) and the U.S. Fish & Wildlife Service have entered into a partnership that will result in planning, prioritizing, conceptual designs, and stakeholder meetings in support of improving fish passages within the Kenai Peninsula Borough Road Service Area (RSA). The purpose is to get closer to assessing all stream crossings and replacing priority culverts and bridges within the RSA and KPB rights-of-way. This project is expected to be of assistance while evaluating future fish passage replacement projects. The project provides \$150,000 of federal funds with a non-cash match of \$5,500.

This project addresses the high needs fish-passages and bridges that are within the RSA, and has the potential to provide funding opportunities in the near future.

FINANCE DEPARTMENT FUNDS/ACCOUNT VERIFIED	
Account:	<u>236.33950.23PAS.49999</u>
Amount:	\$ <u>150,000</u>
By: <i>cg</i>	Date: <u>11/2/2022</u>

Introduced by:	Mayor
Date:	11/15/22
Hearing:	12/13/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-19-28**

**AN ORDINANCE ACCEPTING AND APPROPRIATING A GRANT FROM FM  
GLOBAL FOR THE PURCHASE OF TWO HYDROCARBON AND ACCELERANT  
DETECTORS FOR WESTERN EMERGENCY SERVICE AREA**

**WHEREAS,** Western Emergency Service Area applied for a small grant through FM Global for the purchase of two hydrocarbon and accelerant detectors in the amount of \$3,950, and received the grant as of October 13, 2022; and

**WHEREAS,** there is no match requirement, and the items requested were not previously planned for within the Western Emergency Service Area's FY2023 budget cycle; and

**WHEREAS,** the two pieces of equipment will assist the department with providing better services to the fire service area;

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

**SECTION 1.** 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.** The amount of \$3,950.00 received from FM Global is appropriated to account 209-51410-23GFP-49999 for the purchase of two hydrocarbon and accelerant detectors on behalf of Western Emergency Service Area.

**SECTION 3.** 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 4.** That this ordinance shall be effective retroactive to October 13, 2022.

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

---

Brent Johnson, Assembly President

ATTEST:

---

Yes:

No:

Absent:



# Kenai Peninsula Borough

## Community & Fiscal Projects

### MEMORANDUM

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

**THRU:** Mike Navarre, Mayor *MN*  
Brandi Harbaugh, Finance Director *BH*  
Jon Marsh, Chief Western Emergency Service Area *JM*

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

**DATE:** November 3, 2022

**RE:** Ordinance 2022-19- 28 , Accepting and Appropriating a Grant from FM Global for the Purchase of Two Hydrocarbon and Accelerant Detectors for Western Emergency Service Area (Mayor)

Western Emergency Service Area applied for funds through FM Global for the purchase of two hydrocarbon and accelerant detectors for \$3,950 and received the grant award. The grant is for the purchase of equipment that was not previously planned for in the budget cycle, and the equipment is expected to better assist the fire department with its services.

There is no match requirement for the grant, and the grant is not federal or state funded.

Your consideration of the ordinance is appreciated.

FINANCE DEPARTMENT FUNDS/ACCOUNT VERIFIED	
<b>Account:</b>	<u>209.51410.23GFP.49999</u>
<b>Amount:</b>	<u>\$3,950.00</u>
By: <i>cg</i> _____	Date: <u>11/1/2022</u>

Introduced by:	Mayor
Date:	11/15/22
Hearing:	12/13/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-19-29**

**AN ORDINANCE APPROPRIATING SUPPLEMENTAL FUNDING OF \$216,165 FROM  
THE SEWARD BEAR CREEK FLOOD SERVICE AREA FUND TO REPLENISH THE  
EMERGING SITUATIONS BUDGET AND TO FUND SITE MAINTENANCE  
PROJECTS IN LOST CREEK AND SAWMILL CREEK**

**WHEREAS,** budget ordinance 2022-19 approved \$20,000 in the Seward Bear Creek Flood Service Area (“SBCFSA”) budget for mitigation work under the emerging situations policy; and

**WHEREAS,** the SBCFSA has funded three emerging situations in the total amount of \$26,165 to address mitigation work in Kwechak and Sawmill creeks, exceeding the budgeted amount for this fiscal year; and

**WHEREAS,** supplemental appropriation is requested to replenish \$20,000 for future emerging situations; and

**WHEREAS,** supplemental appropriation is requested to replenish \$6,165 to contract services; and

**WHEREAS,** supplemental funding of \$190,000 is requested for maintenance work on Lost Creek and Sawmill Creek, these projects will improve stream conveyance and minimize potential flooding; and

**WHEREAS,** on September 12, 2022, the SBCFSA board unanimously recommended \$190,000 for two site maintenance projects located in Lost Creek and Sawmill Creek;

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

**SECTION 1.** That the sum of \$26,165 is appropriated from the Seward Bear Creek Flood Service Area fund balance to account 259.21212.00000.43011, contract services, for replenishment of the emerging situations budget.

**SECTION 2.** That the sum of \$190,000 is appropriated from the Seward Bear Creek Flood Service Area fund balance to account 259.21212.00000.43011, contract services, to fund the Lost Creek and Sawmill Creek maintenance projects.

**SECTION 3.** The funds will lapse at the end of the fiscal year.

**SECTION 4.** That this ordinance shall be 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:

Yes:

No:

Absent:

# Kenai Peninsula Borough

## Seward Bear Creek Flood Service Area

### MEMORANDUM

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

**THRU:** Mike Navarre, Mayor *MN* *BA*  
Brenda Ahlberg, Emergency Manager  
Brandi Harbaugh, Finance Director *BA*  
John Hedges, Purchasing & Contracting Director *JH*

**FROM:** Stephanie Presley, SBCFSA Program Lead *SP*

**DATE:** November 3, 2022

**RE:** Ordinance 2022-19-29, Appropriating Supplemental Funding of \$216,165 from the Seward Bear Creek Flood Service Area Fund to Replenish the Emerging Situations Budget and to Fund Site Maintenance Projects in Lost Creek and Sawmill Creek (Mayor)

Within this fiscal year, the Seward Bear Creek Flood Service Area (SBCFSA) has addressed three emerging situations in the total amount of \$26,165, exceeding the approved budget of \$20,000 for fiscal year 2022/2023 (FY23). An emerging situation is an unanticipated developing situation that appears likely to result in significant flood damage within the immediate future if no actions are promptly taken. An emerging situation would benefit from SBCFSA taking action before conditions deteriorate to an emergency or disaster level event, generally at a lower cost than a response delayed until post emergency/disaster occurrence.

Assembly approval is requested to replenish the emerging situation budget of \$20,000, to replenish contract services in the amount of \$6,165, and to fund two maintenance projects to address significant gravel loading to improve stream conveyance and minimize potential flooding. The SBCFSA board unanimously recommended work to be completed in Lost Creek at \$81,400 and Sawmill Creek at \$108,600. The work will be completed by June 30, 2023.

Your consideration of the ordinance is appreciated.

FINANCE DEPARTMENT FUNDS/ACCOUNT VERIFIED	
Account:	<u>259.27910</u>
Amc	<u>16,165</u>
By: <i>cg</i>	Date: <u>11/2/2022</u>

Introduced by:	Mayor
Date:	11/15/22
Hearing:	12/13/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-19-30**

**AN ORDINANCE APPROPRIATING SUPPLEMENTAL FUNDS TO LAND  
MANAGEMENT OPERATIONS FOR THE REMAINDER OF FISCAL YEAR 2023**

**WHEREAS,** the Kenai Peninsula Borough ("Borough") Land Management Division is responsible for the management of Borough lands and natural resources; and

**WHEREAS,** the Borough Land Management Division operates under the Land Trust Fund Account 250; and

**WHEREAS,** \$77,850.88 has been obligated from the Land Trust Fund Account 250 under emergency procurement for assessment and removal services in response to investigating and resolving a trespass situation in Hope, AK; and

**WHEREAS,** it is anticipated that funds in the amount of \$28,145.88 will be reimbursed by the State of Alaska for clean-up costs associated with state land on a cooperative government-to-government basis, which will be directed to the Land Trust Fund upon acceptance; and

**WHEREAS,** additional appropriation is needed to replace the funds obligated to the Hope clean-up response;

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

**SECTION 1.** That the amount of \$77,850 is appropriated from the Land Trust Fund fund balance to account 250.21210.43011 to replenish contract service funds utilized on the Hope response project and provide for FY2023 land management contact services originally budgeted for in FY2023.

**SECTION 2.** That this ordinance shall be effective immediately upon enactment.



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

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

ATTEST:

\_\_\_\_\_

Yes:

No:

Absent:

# Kenai Peninsula Borough

## Planning Department – Land Management Division

### MEMORANDUM

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

**THRU:** Mike Navarre, Mayor *MN*  
Brandi Harbaugh, Finance Director *BH*  
Robert Ruffner, Planning Director *SLRR*

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

**DATE:** November 3, 2022

**RE:** Ordinance 2022-19-30, Appropriating Supplemental Funds to Land Management Operations for the Remainder of Fiscal Year 2023 (Mayor)

KPB's Land Management Division is responsible for the management of KPB lands and natural resources. An environmental assessment and clean up was initiated in response to a trespass situation in Hope involving tanks and barrels of improperly stored fluids, which obligated approximately \$77,850 from Land Trust Fund account 250.21210.43011 for contract services under emergency procurement. \$28,145.88 is anticipated to be reimbursed by the State of Alaska for contract costs involving adjacent State lands.

The attached ordinance would appropriate \$77,850 from the Land Trust Fund fund balance to the FY23 Land Management operating budget to replace funds obligated to the Hope environmental hazard response.

Your consideration of the ordinance is appreciated.

FINANCE DEPARTMENT FUNDS/ACCOUNT VERIFIED	
Account:	<u>250.27910</u>
Amount:	<u>\$77,850</u>
By: <i>cg</i>	Date: <u>11/2/2022</u>

Introduced by:	Mayor
Date:	11/15/22
Hearing:	12/13/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-19-31**

**AN ORDINANCE APPROPRIATING \$1,625,000 FROM THE GENERAL FUND TO  
PROVIDE INTERIM FUNDING FOR PRELIMINARY DESIGN AND DEVELOPMENT  
OF THE BOND FUNDED SCHOOL PROJECTS AUTHORIZED BY BALLOT  
PROPOSITION 2 AT THE OCTOBER 2022 ELECTION**

**WHEREAS,** at an election held in the Kenai Peninsula Borough, Alaska (“Borough”), on October 4, 2022, a majority of the qualified electors of the Borough voting thereon voted in favor of authorizing the issuance of educational capital improvement general obligation bonds of the Borough, in an aggregate principal amount not to exceed \$65,550,000 (“Bonds”), to finance costs of planning, designing, site preparations, construction, acquiring, renovating, installing, and equipping education capital improvements in the Borough (“Proposition No. 2”), as authorized by Ordinance No. 2022-20 of the Borough, passed and approved by the Borough Assembly on June 21, 2022 (the “Election Ordinance”); and

**WHEREAS,** issuance of a portion of the Bonds is anticipated to occur in the first quarter of calendar year 2023, subject to approval by the Borough Assembly; and

**WHEREAS,** to timely allow for the design and construction of certain educational capital improvements set forth in Proposition No. 2, preliminary expenditures prior to the issuance of the Bonds, incident to the commencement of construction in 2023 and 2024, are necessary; and

**WHEREAS,** it is the intent of the Borough to be reimbursed for these preliminary expenditures with proceeds of the Bonds; and

**WHEREAS,** funds used to finance these preliminary expenditures will be appropriated from the General Fund; and

**WHEREAS,** the estimated total cost for the initial design development work for the education capital improvement project is \$1,625,000.00;

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

**SECTION 1.** That funds in the amount of \$1,625,000.00 are hereby appropriated from the General Fund balance to account 401.78050.23SCH.49999 for preliminary design, development and other related expenditures for FY2023 for education capital improvement projects, as set forth in Proposition No. 2.

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

**SECTION 3.** Official Intent. This ordinance is also adopted to satisfy the "official intent" requirements of Section 1.150-2 of the Treasury Regulations adopted under the authority of the Internal Revenue Code of 1986, as amended, (the "Code") with respect to the educational capital improvement projects described in Proposition No. 2, including the Soldotna Elementary Replacement, the Soldotna Preparatory Renovation, the School Student Drop-off, Seward and Nikiski High School Track and Field Improvements, the KPB/KPBSD Maintenance Shop, School Roof Repairs, Kenai Middle School Safety and Security Renovation, Kenai High School Field Restroom and Concession, Homer High School Front Entrance Improvements, Soldotna High School Siding, and similar educational improvements in the Borough (collectively, the "Projects").

The Borough reasonably expects to issue up to \$65,500,000 principal amount of Bonds, in one or more series, to finance costs of the Projects, which are eligible under the Code for financing with proceeds of tax-exempt bonds. Such costs incurred up to 60 days before the effective date of this ordinance will be eligible for reimbursement with proceeds of the Bonds. As of the date set forth below, the Borough reasonably expects that it will issue the Bonds, in one or more series, and use the proceeds of the Bonds as described in this section.

**SECTION 4.** This ordinance shall be 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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{01322970}

Yes:

No:

Absent:



# Kenai Peninsula Borough

## Purchasing & Contracting Department

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### MEMORANDUM

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

**THRU:** Mike Navarre, Mayor *MN*

**FROM:** John Hedges, Purchasing & Contracting Director *JH*  
Brandi Harbaugh, Finance Director *BH*

**DATE:** November 3, 2022

**RE:** Ordinance 2022-19-31, Appropriating \$1,625,000 from the General Fund to Provide Interim Funding for Preliminary Design and Development of the Bond Funded School Projects Authorized by Ballot Proposition 2 at the October 2022 Election (Mayor)

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On October 4, 2022 the Kenai Peninsula Borough voters approved a ballot measure to sell an amount not to exceed \$65,550,000.00 in General Obligation Bonds (Educational Capital Improvements) to finance costs of numerous area-wide school projects in the Kenai Peninsula Borough, as set forth in Proposition No. 2.

The projects associated with the ballot measure are currently in a conceptual status. In order to ensure an effective approach to the design development of the projects slated for work in the 2023 and 2024 construction season, preliminary expenditures incident to the commencement of construction are necessary.

\$44 million of the authorized General Obligation Bonds (Educational Capital Improvements) are scheduled for sale in early 2023. It is the intent of the Borough to fund expenditures including design and development of the 2023 and 2024 projects through this initial bond sale. This appropriation would fund the preliminary expenditures with funds from the General Fund, with the intent of reimbursing the General Fund with proceeds from the bonds. .

The projects to be included in this effort will be Soldotna Elementary school replacement/ Soldotna Preparatory school renovation schematic phase, Seward High school track and field replacement, North Star Elementary school roof replacement, assessment and prioritization efforts for Student Drop-off improvements, and Kenai High School restroom and concession facility. Other educational capital improvement design development work may be pursued contingent upon available funding.

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November 3, 2022  
Re: O2022-19-31

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The estimated total cost for the initial design development work is \$1,625,000.00.

For these reasons, it is in the best interests of Borough to appropriate \$1,625,000.00 from the General Fund to forward fund the work described.

Your consideration of the Ordinance is appreciated.

FINANCE DEPARTMENT FUNDS/ACCOUNT VERIFIED	
Account:	<u>100.27900</u>
Amount:	<u>\$1,625,000</u>
By: <i>cg</i>	Date: <u>11/2/2022</u>

Introduced by:	Mayor
Date:	11/15/22
Hearing:	12/13/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-19-32**

**AN ORDINANCE DEOBLIGATING PREVIOUSLY APPROPRIATED PROJECT FUNDS OF \$1,522,530 AND APPROPRIATING \$659,783 OF THOSE FUNDS FOR THE EXPANDED SCOPE OF SOUTH PENINSULA HOSPITAL NUCLEAR MEDICINE/PHARMACY/INFUSION RENOVATION PROJECT**

- WHEREAS,** the Kenai Peninsula Borough ("Borough") owns and provides for the operation of South Peninsula Hospital ("Hospital") through the South Kenai Peninsula Hospital Service Area, ("Service Area"); and
- WHEREAS,** the Borough has entered into an operating agreement with South Peninsula Hospital, Inc. ("SPHI") for the lease and operation of the Hospital and other medical facilities, to operate these medical facilities on a nonprofit basis in order to ensure the continued availability of the medical services to the service area residents and visitors; and
- WHEREAS,** through previous capital project appropriations and the ongoing master planning process, SPHI and the Borough have identified the nuclear medicine service line, the pharmacy renovation, and the infusion clinic as areas of service that are in immediate need for improvement.; and
- WHEREAS,** toward that end, the combining of these areas of work is both necessary and more effective in the execution of the projects; and
- WHEREAS,** approval of the requested funding will allow for the design and development of bid ready plans for the project, assistance with the certificate of need process through the Department of Health and Social Services, third party cost estimating, and other project related preliminary expenditures; and
- WHEREAS,** it is requested that a sole source award to Architects of Alaska, Inc. for the design services be approved by the Assembly; and
- WHEREAS,** the estimated total cost of the design portion of the project is \$659,783; and
- WHEREAS,** South Peninsula Hospital Plant Replacement and Expansion funds of \$567,530 are being deobligated from the previously appropriated FY21 Nuclear Medicine Project; and

**WHEREAS,** South Peninsula Hospital Capital Project funds of \$400,000 are being deobligated from the previously appropriated FY23 Nuclear Medicine Project; and

**WHEREAS,** South Peninsula Hospital Capital Project funds of \$555,000 are being deobligated from the previously appropriated FY22 Pharmacy Remodel Project; and

**WHEREAS,** funding for the expanded Nuclear Medicine/Pharmacy/Infusion Renovation Project will come from South Peninsula Hospital Capital Project funds previously appropriated and deobligated from the Nuclear Medicine and Pharmacy projects; and

**WHEREAS,** at its meeting on November 10th, 2022, the Service Area Board recommended \_\_\_\_\_ approval of the appropriation of the funding for the project;

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

**SECTION 1.** That South Peninsula Hospital Plant Replacement and Expansion funds in the amount of \$567,530 are deobligated from the previously appropriated Nuclear Medicine Renovation Project 491.81210.21SHA.49999.

**SECTION 2.** That South Peninsula Hospital Capital Project funds in the amount of \$400,000 are deobligated from previously appropriated Nuclear Medicine Renovation Project 491.81210.23SHB.49999.

**SECTION 3.** That South Peninsula Hospital Capital Project funds in the amount of \$555,000 are deobligated from previously appropriated Pharmacy Remodel Project 491.81210.22SHA.49999.

**SECTION 4.** That South Peninsula Hospital Capital Project funds in the amount of \$659,783 are appropriated from Sections 2 and 3 de-obligated project funds to account 491.81210.23SPH.49999 for the SPH Preliminary Design and Development for Nuclear Medicine, Pharmacy and Infusion Renovation Project.

**SECTION 5.** That the appropriations made in Section 4 of this ordinance are of a project length nature and as such do not lapse at the end of any particular fiscal year.

**SECTION 6.** That this ordinance shall be 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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Yes:

No:

Absent:

# Kenai Peninsula Borough

## Purchasing & Contracting Department

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### MEMORANDUM

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

**THRU:** Mike Navarre, Mayor *MN*

**FROM:** John Hedges, Purchasing & Contracting Director *JH*  
Brandi Harbaugh, Finance Director *BH*

**DATE:** November 3, 2022

**RE:** Ordinance 2022-19-32, Deobligating Previously Appropriated Project Funds of \$1,522,530 and Appropriating \$659,783 of those Funds for the Expanded Scope of South Peninsula Hospital Nuclear Medicine/Pharmacy/Infusion Renovation Project (Mayor)

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South Peninsula Hospital (SPH), through previous capital project appropriations and the ongoing master planning process, has identified the nuclear medicine service line, the pharmacy renovation, and the infusion clinic as areas of service that are in immediate need of improvement. Toward that end, the combining of these areas of work is both necessary and more effective in the execution of the projects. The correction of building code compliance issues and improvement of inefficient operational processes can also be enhanced by the broader scope.

Currently, space requirements necessary to move forward with the Nuclear Medicine project require the displacement of the South Peninsula Hospital's Pharmacy; requiring expansion of the project scope, such that it will now include approximately 6600 square feet of renovation and shell space construction. Also included in the project scope is the development of an infusion clinic in the shelled space of the South Peninsula Hospital facility.

Approval of the requested funding will allow for the design and development of bid ready plans for the project, assistance with the certificate of need process through the Department of Health and Social Services, third party cost estimating, and other project related preliminary expenditures.

Once a fixed project scope has been established an additional appropriation will be brought forward to fund the construction portion of the project.

In November of 2021 Architects of Alaska, Inc. (AAI) was selected, by the Borough Purchasing and Contracting Department, through a formal RFP process, as the most qualified and responsive proposer for SPH's Master Planning Project. In conjunction with that process, SPH contracted with AAI to develop a concept for



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 November 3, 2022  
 Re: O2022-19-32

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a new nuclear medicine service line. This combination of efforts led to the identification of the consolidation and expansion of the project scope.

At the request of the Purchasing and Contracting Department, AAI provided a quote of \$628,283.00 for the design and development services of the SPH Nuclear Medicine/Pharmacy/Infusion Renovation Project. Due to the ongoing efforts of the master planning project, the firm's current experience with the facility and organization, and with the intent of expediting the project to address the immediate need for the improvements, it is requested that a sole source award to Architects of Alaska, Inc. for the design services be approved by the Assembly.

The estimated total cost of the design portion of the project is \$659,783.00, which includes the design portion identified above and \$31,500.00 for other administrative preliminary project costs such as: Project management; KPB administrative fee; advertising; and, other costs necessary to complete the design effort.

This ordinance deobligates SPH Plant Replacement and Expansion funds of \$567,530 and SPH Capital Project funds of \$955,000 from the previously appropriated Nuclear Medicine Renovation and Pharmacy Remodel Projects.

For these reasons, it is in the best interests of Borough to appropriate \$659,783.00 to provide funding for the SPH Nuclear Medicine/Pharmacy/ Infusion Renovation Project and authorize the Sole Source award of the design contract to Architects of Alaska, inc.

Your consideration of the Ordinance is appreciated.

**FINANCE DEPARTMENT  
 FUNDS/ACCOUNT VERIFIED**

**Account:** 491.81210.23SHB.49999 **Amt:** \$400,000

**Account:** 491.81210.21SHA.49999 **Amt:** \$567,530

By: *eg* Date: 11/3/2022

Introduced by: Johnson, Cox  
Date: 11/15/22  
Hearing: 12/13/22  
Action:  
Vote:

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-19-33**

**AN ORDINANCE AMENDING THE DEPUTY BOROUGH CLERK JOB  
DESCRIPTION, APPROVING A FULL-TIME RECORDS MANAGER POSITION AND  
APPROPRIATING NECESSARY FUNDS FOR THE POSITION**

- WHEREAS,** the Borough Clerk has the primary responsibility for the development, maintenance and operation of the borough's records management system, and supervises the Records Division and Records Manager; and
- WHEREAS,** Resolution 89-008 deleted the full time Records Manager position and assigned administrative duties of the Records Division to the Clerk's Office staff; and
- WHEREAS,** Resolution 98-004 established the Deputy Borough Clerk serve as the Records Manager and supervisor of the Records Division, remaining under the direct supervision of the Borough Clerk; and
- WHEREAS,** the Deputy Borough Clerk has been charged with devoting a third of normal work hours to the role of Records Manager; and
- WHEREAS,** with the increasing work load and duties of the combined Deputy Borough Clerk / Records Manager position, the Borough Clerk has determined this position should be divided into two full time positions; and
- WHEREAS,** the Deputy Borough Clerk has been charged with a more involved role in the election process as well as the administration of all borough board and commission appointments; and
- WHEREAS,** the Records Manager has been charged with the full time administration of public records requests and incorporating borough electronic records into the administration of the borough's retention schedule and archiving processes; and
- WHEREAS,** this ordinance appropriates \$58,081 from the General Fund fund balance to provide the necessary funds to fund the Records Manager position for the remainder of the fiscal year;

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



# Kenai Peninsula Borough

## Office of the Borough Clerk

### MEMORANDUM

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

**THRU:** Brent Johnson, Assembly President BJ  
Tyson Cox, Assembly Vice President JRC  
Justen Huff, HR Director JH  
Brandi Harbaugh, Finance Director BH

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

**DATE:** November 3, 2022

**RE:** Ordinance 2022-19-33 Amending the Deputy Borough Clerk Job Description, Approving a Full-Time Records Manager Position and Appropriating Necessary Funds for the Position (Johnson, Cox)

The Deputy Borough Clerk position is a unique position in that it also serves as the Records Manager for the Kenai Peninsula Borough (Borough). This dual-duties position for the Deputy Borough Clerk amounts to allocating two-thirds time as Deputy Borough Clerk and one-third time as Records Manager.

Splitting time between these two job functions has been an increasing burden and growing challenge over the last few years. The Deputy Borough Clerk position has taken on the task of the noticing and appointment process for all boards and commissions in the Borough. At the same time, the Records Manager position launched two new software solutions and is getting prepared for implementing electronic records in its archival software. In addition, public records requests continue to increase year-over-year and general oversight of the public records request process requires significant personnel time. Adding these tasks to an already stretched-thin Deputy Borough Clerk position has become too much for one person to handle.

This ordinance will split the Deputy Borough Clerk position and Records Manager Position into two full-time positions within the Clerk's Office and appropriates necessary funds to fund the Records Manager position for the remainder of FY23.

Your consideration of the ordinance is appreciated.

FINANCE DEPARTMENT FUNDS/ACCOUNT VERIFIED		
Acc:	100.27910	Amt: \$58,081
By:	eg	Date: 11/3/2022

**Kenai Peninsula Borough  
Salary Schedule  
Effective July 1, 2022**

Classified

**40 hour**

	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>	<u>Step 7</u>	<u>Step 8</u>	<u>Step 9</u>	<u>Step 10</u>	<u>Step 11</u>	<u>Step 12</u>
G	18.47	19.16	19.86	20.25	20.66	21.07	21.49	21.92	22.36	22.81	23.27	23.73
H	19.76	20.50	21.25	21.67	22.11	22.55	23.00	23.46	23.93	24.41	24.89	25.39
I	21.14	21.94	22.73	23.19	23.65	24.13	24.61	25.10	25.60	26.11	26.64	27.17
J	22.62	23.47	24.33	24.81	25.31	25.81	26.33	26.86	27.39	27.94	28.50	29.07
K	24.21	25.12	26.03	26.55	27.08	27.62	28.17	28.74	29.31	29.90	30.49	31.10
L	25.90	26.87	27.85	28.41	28.97	29.55	30.14	30.75	31.36	31.99	32.63	33.28
M	27.71	28.76	29.80	30.39	31.00	31.62	32.25	32.90	33.56	34.23	34.91	35.61
N	29.65	30.77	31.88	32.52	33.17	33.83	34.51	35.20	35.91	36.62	37.36	38.10
O	31.73	32.92	34.12	34.80	35.49	36.20	36.93	37.67	38.42	39.19	39.97	40.77
P	33.95	35.23	36.50	37.23	37.98	38.74	39.51	40.30	41.11	41.93	42.77	43.62
Q	36.32	37.69	39.06	39.84	40.64	41.45	42.28	43.12	43.98	44.86	45.76	46.68
R	38.87	40.33	41.79	42.63	43.48	44.35	45.24	46.14	47.06	48.00	48.96	49.94

**56 hour**

	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>	<u>Step 7</u>	<u>Step 8</u>	<u>Step 9</u>	<u>Step 10</u>	<u>Step 11</u>	<u>Step 12</u>
K	17.00	17.64	18.28	18.65	19.02	19.40	19.79	20.19	20.59	21.00	21.42	21.85
L	18.19	18.88	19.56	19.95	20.35	20.76	21.17	21.60	22.03	22.47	22.92	23.38
M	19.47	20.20	20.93	21.35	21.78	22.21	22.66	23.11	23.57	24.04	24.52	25.01
N	20.83	21.61	22.40	22.84	23.30	23.77	24.24	24.73	25.22	25.73	26.24	26.76
O	22.29	23.12	23.96	24.44	24.93	25.43	25.94	26.46	26.99	27.53	28.08	28.64
P	23.85	24.74	25.64	26.15	26.68	27.21	27.75	28.31	28.87	29.45	30.04	30.64
Q	25.51	26.47	27.43	27.98	28.54	29.11	29.70	30.29	30.90	31.51	32.14	32.79
R	27.30	28.33	29.36	29.94	30.54	31.15	31.77	32.41	33.06	33.72	34.39	35.08

Management

The amounts below were authorized through Ordinance 2021-19 June 1, 2021

<u>Level</u>	<u>Minimum</u>	<u>Mid point</u>	<u>Maximum</u>
1	63,959	76,878	89,797
2	68,423	82,245	96,067
3	73,190	87,974	102,758
4	78,417	93,266	110,100
5	83,961	100,753	121,736
6	89,820	110,088	130,356
7	96,158	117,914	139,669



## Position Description

### Kenai Peninsula Borough

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#### Deputy Borough Clerk

#### Service Type: Legislative, Level 3

**Definition:** Under the general direction and supervision of the borough clerk, the deputy borough clerk assists with all office functions, acts as computer systems administrator, and assists in the administration of local elections.

**Minimum Qualifications:** Degree in Public Administration or related field and four years' experience in municipal government, including two years' supervisory experience. Experience may be substituted for educational requirements. Advanced knowledge of microcomputers and networking systems; excellent English, spelling, punctuation and grammar skills; and ability to communicate clearly and concisely, orally and in writing. Ability to work a varied schedule required. Familiarity with legislative and election procedures preferred.

#### **Essential Functions:**

1. Attends all Regular and Special Assembly meetings and prepares minutes. Responsible for final version of resolutions and ordinances as permanent record, in addition to codification oversight.
2. Maintains computer index subject filing system, i.e. legislative history.
3. In the absence of the Borough Clerk, supervises clerical and/or service operations of the office.
4. Assists in the supervision and administration of all Regular and Special municipal elections. Assists with state elections as requested.
5. Acts as administrative staff to the Assembly's Legislative Committee with duties that include tracking of state and federal legislation and preparation of the borough's official annual legislative priorities book for distribution to state and federal legislators.



**Other Functions:**

1. Serves as acting borough clerk in the absence of the clerk.
2. Serves as computer systems administrator for department.
3. Assists in the recruitment and assignment of clerical personnel. Trains new personnel in general functions and specific duties.
4. Maintains voluminous and complex administrative and general reports; reviews various reports and forms for completeness.
5. Composes ordinances, resolutions and accompanying memoranda for assembly action.
6. Renders administrative assistance to the Borough Assembly.
7. Administers the appointment process for all Borough boards and commissions, including the preparation of the notice of vacancies, maintaining various filing periods and forwarding applicants to the Mayor/Assembly as appropriate. Administers/updates the boards and commissions online membership rosters and online applications.
8. Performs research for public, borough staff and assembly.
9. Acts as voter registrar, voter registrar trainer and notary public.
10. Attends municipal clerk training sessions while working for professional certification with International Institute of Municipal Clerks (IIMC). Once certification attained, participates in continuing education as appropriate.
11. Performs other specialized and complex duties as assigned.

**Physical Demands:** While performing the duties of this job, the employee is regularly required to communicate orally and to use hands dexterously to operate office equipment. The employee frequently is required to sit; and occasionally required to stand, walk, and reach with hands and arms. The employee must occasionally transport up to 30 pounds. Specific vision abilities required include close vision and the ability to adjust focus. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

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**Position Description Record:**

**Date Updated:** 11.07.2022

**Reason for Update:** Revised

**Date Updated:** 11.06.2019

**Reason for Update:** Reformatted

**Date Updated:** 10.2008

**Reason for Update:** Revised

**Date Updated:** 11.2007

**Reason for Update:** Reviewed & Revised

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## Position Description

### Kenai Peninsula Borough

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## Records Manager

### Service Type: Legislative, Level 3

**Definition:** Under the general direction and supervision of the borough clerk, the records manager supervises records management staff, administers the procedures and processes of the borough's records management program, as well as manages the records center facility.

**Minimum Qualifications and Required Qualifications:** High School Diploma or G.E.D. required. Four years' experience in municipal government, including two years supervisory experience; or any equivalent combination of education, training and experience which provides the required knowledge, skills and abilities to perform the essential functions of the job.

- Statutory and regulatory requirements pertaining to records management. Familiarity with records management requirements, guidelines, and procedures.
- Laws pertaining to privacy and security of confidential records.
- Microsoft Office programs and advanced knowledge of computers, microfilming equipment and record management software.
- Experience with writing, developing and implementing records retention schedules.
- Ability to compute, maintain and prepare complex records correctly, insuring confidentiality.
- Ability to deal with citizen and department inquiries tactfully, courteously, and in a professional matter.
- Ability to read and interpret documents such as borough code, state statues and various regulations as applicable.
- Research and analyze records management issues and problems.

- Analyze open records request and fill request in accordance with borough code, Alaska Records Act as well as other applicable laws and regulations.
- Ability to prepare and analyze a variety of reports, administer and prepare the records division's annual budget.
- Ability to make decisions based on available data/criteria, laws and regulations, or borough policy.

**Essential Functions:**

1. Oversee borough records from creation and preservation through disposal for various mediums, including but not limited to paper, electronic, microfilm, microfiche, etc.
2. Develop, maintain, verify and evaluate existing systems, as well as the establishment of new systems, while adhering to borough code, state statutes and other related regulations.
3. Directly supervises the records management section personnel including participating in the hiring of staff, assigning specific duties, completing and presenting performance evaluations, and undertaking any disciplinary actions necessary.
4. Trains staff members in all borough departments on procedures for use of records computer system. Consults data processing in development, design and operation of computer applications. Maintains user documentation. Responds to technical questions regarding system's functions.
5. Ensures records are easily accessible and available to the departments and public as needed. Administers the public records request software, record request submissions and processes.
6. Establish procedures to economically combine, simplify or eliminate borough forms to the extent possible without compromising administrative efficiency. Consult with each department head and determine informational/form needs of each department to reduce the burden on both citizens and businesses by minimizing the number of forms which each shall be required to complete and return to the borough.

**Other Functions:**

1. Maintains voluminous and complex administrative and general reports; reviews various reports and forms for completeness.
2. Prepares and administers records management annual budget and presents same to the assembly. Reviews and approves purchase orders, invoices and timesheets.
3. Performs research for public, borough staff and assembly.
4. Attends records training sessions working for professional certifications with local and national records and archivist associations. Participates in continuing education as appropriate.
5. Prepares and presents an annual report to the assembly a detailed description of all records series to be removed from active departmental files to the centralized records center. Also informs the assembly of all obsolete records destroyed during the preceding year.
6. Performs other specialized and complex duties as assigned and outlined in borough code.

**Physical Demands:** While performing the duties of this job, the employee is regularly required to communicate orally and to use hands dexterously to operate office equipment. The employee frequently is required to sit; and occasionally required to stand, walk, and reach with hands and arms. The employee must occasionally transport up to 30 pounds. Specific vision abilities required include close vision and the ability to adjust focus. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

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**Position Description Record:**

**Date Updated:** 11.07.2022

**Reason for Update:** New

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**MEMORANDUM**

**TO:** Brent Johnson, Assembly President  
Members of the Borough Assembly

**FROM:** Mike Navarre, Borough Mayor *MN*

**DATE:** November 15, 2022

**RE:** Appointments to Service Area Board Applicants

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Pursuant to KPB Title 16, the applicant listed below has been verified as a registered voter of the Borough and resides within the Road Service Area.

I hereby submit my recommendations for confirmation by the Assembly.

**EAST PENINSULA HIGHWAY EMERGENCY SERVICE AREA BOARD**

Seat C                      Sean P. Carrington

**KACHEMAK EMERGENCY SERVICE AREA BOARD**

Seat E                      Ralph Crane

**NIKISKI SENIOR SERVICE AREA BOARD**

Seat B                      Daniel H. Kartchner

**SELDOVIA RECREATIONAL SERVICE AREA BOARD**

Seat A                      Karen R. Latimer

Thank you for your consideration.

Kenai Peninsula Borough  
Office of the Borough Clerk

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**MEMORANDUM**

**TO:** Mike Navarre, Borough Mayor  
**THRU:** Johni Blankenship, Borough Clerk (JB)  
**FROM:** Michele Turner, Deputy Borough Clerk (VW)  
**DATE:** October 31, 2022  
**RE:** Verification of Service Area Board Applicants

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The annual notice of vacancy for Service Area Board seats was advertised on September 1, 2022. The application period closed on September 21, 2022. Several seats remain open until filled.

Pursuant to KPB Title 16, the applicant listed below has been verified as a registered voter of the Borough and resides within the Road Service Area.

The applications are submitted herewith for your consideration.

**EAST PENINSULA HIGHWAY EMERGENCY SERVICE AREA BOARD**

Seat C Sean P. Carrington

**KACHEMAK EMERGENCY SERVICE AREA BOARD**

Seat E Ralph Crane

**NIKISKI SENIOR SERVICE AREA BOARD**

Seat B Daniel H. Kartchner

**SELDOVIA RECREATIONAL SERVICE AREA BOARD**

Seat A Karen R. Latimer

Thank you.

# Kenai Peninsula Borough

## Office of the Borough Clerk

Service Area Board Application Submitted 2022-10-13 02:31:47

Service Area: East Peninsula Highway Emergency, Seat C (Term Expires 10/2025)

<b>Applicant Name</b> Sean P. Carrington	<b>Daytime Phone</b> 9072025610
<b>Email</b> sfdprevetion@gmail.com	<b>Date of Birth</b> [REDACTED]
<b>Physical Residence Address</b> 33284 Forest Rd. Sewarf, Alaska 99674	<b>Mailing Address</b> ,
<b>SS #</b>	<b>Voter #</b> [REDACTED]
<b>I have been a Resident of the Kenai Peninsula Borough for:</b> 27 years, 11 months	<b>I have been a Resident of the selected Service Area for:</b> 27 years, 11 months
<b>What knowledge, experience, or expertise will you bring to this board?</b> Seward Fire - firefighter Moose Pass Fire - Lieutenant EPHESA Board - Co-Chair - last original board member Bear Creek Fire - Board Member	

# Kenai Peninsula Borough

## Office of the Borough Clerk

Service Area Board Application Submitted 2022-10-21 15:20:20

Service Area: Kachemak Emergency, Seat <sup>E</sup>~~D~~ (Term Expires 10/2025)

<b>Applicant Name</b>	<b>Daytime Phone</b>
Ralph Crane	9512186362
<b>Email</b>	<b>Date of Birth</b>
kummok@earthlink.net	[REDACTED]
<b>Physical Residence Address</b>	<b>Mailing Address</b>
54377 Kavik Court Homer, AK 99603	,
<b>SS #</b>	<b>Voter #</b>
	[REDACTED]
<b>I have been a Resident of the Kenai Peninsula Borough for:</b>	<b>I have been a Resident of the selected Service Area for:</b>
20 years, 4 months	1 years, 9 months
<b>What knowledge, experience, or expertise will you bring to this board?</b>	
35+ years as an emergency responder with both fully paid and volunteer fire departments/agencies, firefighter through chief officer, wildland, structural, marine, and aviation firefighting and investigation.	

# Kenai Peninsula Borough

## Office of the Borough Clerk

Service Area Board Application Submitted 2022-10-19 13:33:14

Service Area: Nikiski Senior, Seat B (Term Expires 10/2025)

<b>Applicant Name</b> Daniel H. Kartchner	<b>Daytime Phone</b> 907-513-2293
<b>Email</b> thewoodworkingpoet@yahoo.com	<b>Date of Birth</b> [REDACTED]
<b>Physical Residence Address</b> 49153 Halbouty rd. Nikiski, , AK 99611	<b>Mailing Address</b> 49153 Halbouty rd. Kenai, AK 99611
<b>SS #</b> [REDACTED]	<b>Voter #</b> Marilyn Tsosie Kartchner
<b>I have been a Resident of the Kenai Peninsula Borough for:</b> 14 years, 5 months	<b>I have been a Resident of the selected Service Area for:</b> 14 years, 5 months



**What knowledge, experience, or expertise will you bring to this board?**

I have worked in all phases of construction and land development. I have developed and owned several properties in several states and here and am quite aware of the complexities of land ownership. Our family currently owns and operates The Falcon's Nest Farms in Nikiski. We are an agricultural research facility, nursery, and a petting zoo. Part of our farm is a non profit, which runs under Bridges. We are well known throughout the community as people who are community minded and we really care what people eat. This year we have given away just over 80 thousand dollars worth of food to the community members for no money at all. We also have interactive experiences for the whole family with the farm. I am noting this last, because we are firmly planted here and have been that steadfast since the day we came. I am direct. I am helpful. And I am very knowledgeable about land, land rights, road development and service. I am a multi-talented man whom anyone making this decision should already know enough about me to know that I would be an active and helpful participant, who is able to consider whole problems and solve them. I have run equipment, welded, ran construction jobs, been a 25 year painting contractor, and developed several other farms in other states before coming to

Alaska, so I am also familiar with laws and action in other states as well. I am definitely a people person. I love to see good things prevail in government offices, but am unafraid to speak up when something needs to change. I am still going to college at 56 years old, because I never like to remain stagnant in my knowledge, but love learning new things. I am currently 13 credits away from a double BS in Professional writing and Journalism/with a minor in Psychology. Those who know me know that when I commit myself to anything, I accomplish that which I set out to do. Just drive out and look at our farm and see for yourselves what someone does who cares about every person and the issues that are important to them. I am selfless and that is just the kind of person you need to have working within this department. I have a very focused sense of right and wrong and believe this is one of the most important things to consider in filling any of the seats available.

# Kenai Peninsula Borough

## Office of the Borough Clerk

Service Area Board Application Submitted 2022-10-21 14:49:21

Service Area: Seldovia Recreational, Seat A (Term Expires 10/2025)

<b>Applicant Name</b> Karen R Latimer	<b>Daytime Phone</b> 907-440-1484
<b>Email</b> Karenrlatimer@gmail.com	<b>Date of Birth</b> [REDACTED]
<b>Physical Residence Address</b> 2412 Jakolof Bay Rd. Seldovia, Alaska 99663	<b>Mailing Address</b> PO Box 53 Seldovia, AK 99663
<b>SS #</b>	<b>Voter #</b>
<b>I have been a Resident of the Kenai Peninsula Borough for:</b> 10 years, 4 months	<b>I have been a Resident of the selected Service Area for:</b> 10 years, 4 months
<b>What knowledge, experience, or expertise will you bring to this board?</b> I've participated in several programs through the Sea Otter Community Center including exercise and pottery classes. I've served on the Seldovia Public Library Board for 9 years and am currently the Secretary/Treasurer. I have experience creating budgets and am a team player.	



Kenai Peninsula Borough  
Office of the Borough Mayor

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**MEMORANDUM**

**TO:** Brent Johnson, Assembly President  
Members of the Borough Assembly

**FROM:** Mike Navarre, Borough Mayor *MN*

**DATE:** November 15, 2022

**RE:** Appointments to Resilience and Security Advisory Commission Applicants

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Per Ordinance 2121-25, appointed members shall have experience in at least one of the ten areas defining the scope of the commission. Sustainability commissioners shall submit a resume with their application to be appointed by the mayor and approved by the assembly.

I hereby submit my recommendations for confirmation by the Assembly.

**CENTRAL PENINSULA** (areas of Sterling, Kenai, Soldotna, Kalifornsky)

- Jeremy Spring Flynn                      Resident Address listed in Soldotna

Thank you for your consideration.

Kenai Peninsula Borough  
Office of the Borough Clerk

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**MEMORANDUM**

**TO:** Mike Navarre, Borough Mayor  
**THRU:** Robert Ruffner, Planning Director  
**THRU:** Johni Blankenship, Borough Clerk (JB)  
**FROM:** Michele Turner, Deputy Borough Clerk (MT)  
**DATE:** November 2, 2022  
**RE:** Verification of Resilience and Security Advisory Commission Applicants

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Due to a resignation on the advisory commission, a notice of vacancy for a Central Peninsula Seat on the Resilience and Security Advisory Commission was posted in the Borough Administration Building, KPB's Facebook page and KPB's website. The seat has remained open until filled.

Per Ordinance 2020-25, appointed members shall have experience in at least one of the ten areas defining the scope of the commission. Sustainability commissioners shall submit a resume with their application to be appointed by the mayor and approved by the assembly.

The attached applications are submitted herewith for your consideration.

**CENTRAL PENINSULA** (areas of Sterling, Kenai, Soldotna, Kalifornsky)

- Jeremy Spring Flynn      Resident Address listed in Soldotna

cc: Land Management

# Kenai Peninsula Borough

## Planning Department

Resilience & Security Advisory Commission Application Submitted 2022-04-12 10:33:27

Seat: Central Peninsula (Sterling, Kenai, Soldotna, Kalifornsky) Term Expires 09/30/2022

<b>Name:</b>
Jeremy Spring Flynn
<b>Mailing Address:</b>
41325 Dolly Varden Way Soldotna, Alaska 99669
<b>Residential Address (if different from mailing address):</b>
,
<b>Email:</b>
jeremyflynn000@gmail.com
<b>Mobile:</b>
<b>Work Phone:</b>
720-347-5868
<b>Home Phone:</b>
<b>Occupation or place of employment:</b>
Self Employed - Growing Goodness
<b>How long have you lived in the area served by this Resilience &amp; Security Advisory Commission?</b>
1yr
<b>In which of the 10 areas defining the scope of the commission do you have experience?</b>
1. Diverting materials that would be sent to the landfill 2. Improve cost and energy efficiency of buildings 3. Improve cost & efficiency of transportation 5. Support hazardous material mitigation 6. Improve food security through local agg. 7. Conduct cost benefit analysis of sustainable recourse initiatives 8. Actively engage and communicate with borough community members 9. Seek funding to support work of the commission
<b>{Expertise:caption}</b>
{Expertise:value}

**{CurrentlyServe:caption}**

{CurrentlyServe:value}

**{Available:caption}**

{Available:value}

**Comments (areas of interest, additional experience or qualifications, etc.):**

1. Currently operate the USDA community compost program
2. I own a custom home building company with a high focus on energy efficiency
3. 20+ years of experience in the Heavy Civil world
5. Years of experience working in the environmental industry
6. Background in permaculture, mycology and regenerative food production
8. Member of Cook Inlet Keeper, KLFC, The Garden Club and I perform monthly educational sessions for community members
9. Experience with Federal/State Grant writing as well as PPEA & PPTA proposal writing

# Kenai Peninsula Borough Assembly

## MEMORANDUM

**TO:** Kenai Peninsula Borough Assembly Members  
**THRU:** Brent Johnson, Assembly President  
**FROM:** Johni Blankenship, Borough Clerk (JB)  
**DATE:** November 15, 2022  
**RE:** 2023 Meeting Schedule

KPB 22.40.010 (A) states in part, "Regular meetings of the assembly shall be held on the first and third Tuesday of each month at 6:00 p.m. in the assembly room of the Borough Administration Building. The assembly shall by resolution or motion, establish the date and place for assembly meetings by approving a calendar for the upcoming year. The assembly shall, at a minimum, schedule at least two meetings per month for six (6) months of each year". The meeting schedule for 2023 is proposed as follows:

MONTH	1ST MEETING	2ND MEETING	COMMENTS
January	3	17	
February	7	21	Special Mayor Election – February 14 <sup>th</sup>
March	14		Special Mayoral Runoff Election – March 7 <sup>th</sup> (Only if Required) Only one meeting scheduled – Spring Break
April	4	18	
May	2	16	Budget Work Sessions Scheduled for May 2 <sup>nd</sup> tentatively starting at 10:00 a.m., May 15 <sup>th</sup> tentatively starting at 9:00 a.m. and May 16 <sup>th</sup> tentatively starting at 10:00 a.m.
June	6	20	
July	11		Only one meeting scheduled – Summer Break (Second Tuesday in the month due to July 4 <sup>th</sup> Holiday)
August	1	15	
September	5	19	
October	10	24	2 <sup>nd</sup> and 4 <sup>th</sup> Tuesday Due to Election October 3, 2023 - Regular Municipal Election
November	7		Only one regular meeting scheduled – Winter Break
December	12		Only one meeting scheduled – Holiday Break (Second Tuesday in the month due to AML Annual Conference Schedule)

Kenai Peninsula Borough  
Office of the Borough Mayor

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**MEMORANDUM**

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

**FROM:** Mike Navarre, Kenai Peninsula Borough Mayor *MN*

**DATE:** November 15, 2022

**RE:** Appointment to the KPB Advisory Planning Commission

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Per KPB 21.02.060, the applicants listed below have been verified as:  
1.) residents within the commission boundaries in which they are applying,  
and 2.) registered voters within the precincts covered by the commission  
boundaries.

The following applications are being submitted for your consideration.

<b><u>Anchor Point Advisory Planning Commission</u></b>	<b><u>Seat</u></b>
Angela Roland	G
<b><u>Funny River Advisory Planning Commission</u></b>	<b><u>Seat</u></b>
Michael Masters	G
<b><u>Nikiski Advisory Planning Commission</u></b>	<b><u>Seat</u></b>
Tom Coursen	A
Patricia Williams	B
Karen S. McGahan	C
Lenora Niesen	D
Kelly Brewer	E
Michael A. Peek	F
Jason Ross	G

Thank you for your consideration.



# Kenai Peninsula Borough

## Planning Department

Advisory Planning Commission Application Submitted 2022-10-26 12:36:15

APC/Seat: Anchor Point – Seat G (Term Expires 09/30/2024)

<b>Name</b> Angela Roland	<b>Mobile Phone</b>
<b>Home Phone</b> (907) 231-1502	<b>Work Phone</b>
<b>Email</b> angelaroland@gmail.com	<b>Date of Birth</b>
<b>SSN</b>	<b>Voter #</b> [REDACTED]
<b>Residence Address</b> ,	<b>Mailing Address</b> P O Box 182 Anchor Point, Alaska 99556

How long have you lived in the area served by this Advisory Planning Commission?	What knowledge, experience, or expertise will you bring to this board?
<p>3 years</p>	<p>I've lived in several areas that were once extremely rural and I've experienced their growth and development as a property owner.</p> <p>I've participated in my community as a business owner, a volunteer with seniors, children, and as my neighborhood association leader. In my community outside of Austin, Texas, I met and worked with my neighbors to obtain federal grant (CDBG) to pave our neighborhood's roads, correct storm drainage, abate hazards, and provide mail delivery.</p> <p>I met with city planning departments, road engineers, and county commissioners to guide our project. It took a few years, the project was considered a success - flooding was no longer an issue when it rained, the school bus could pick up the kids at the end of the road and following EPA guidelines, an endangered species' habitat was considered and preserved.</p> <p>Additionally, my career as an IT professional includes working with diverse groups at state universities and state agencies. Here in Alaska, I worked at the University of Alaska, Anchorage, the Department of Natural Resources as a Business Analyst on the Unified Permit Project, and as an IT Operations Manager for Fish and Game.</p> <p>I am experienced in researching and applying statutes and policies that provide guidance on maintaining quality of life for everyone in the community.</p> <p>I own property in Anchor Point and am becoming more familiar with the borough and some of the needs of my community. Currently, I am working with Enstar and the borough to bring the gas line into my neighborhood east of Chapman Elementary.</p> <p>Thank you and I look forward to meeting you.</p>

How long have you lived in the area served by this Advisory Planning Commission?	What knowledge, experience, or expertise will you bring to this board?
<p>3 years</p>	<p>I've lived in several areas that were once extremely rural and I've experienced their growth and development as a property owner.</p> <p>I've participated in my community as a business owner, a volunteer with seniors, children, and as my neighborhood association leader.</p> <p>In my community outside of Austin, Texas, I met and worked with my neighbors to obtain federal grant (CDBG) to pave our neighborhood's roads, correct storm drainage, abate hazards, and provide mail delivery.</p> <p>I met with city planning departments, road engineers, and county commissioners to guide our project. It took a few years, the project was considered a success - flooding was no longer an issue when it rained, the school bus could pick up the kids at the end of the road and following EPA guidelines, an endangered species' habitat was considered and preserved.</p> <p>Additionally, my career as an IT professional includes working with diverse groups at state universities and state agencies. Here in Alaska, I worked at the University of Alaska, Anchorage, the Department of Natural Resources as a Business Analyst on the Unified Permit Project, and as an IT Operations Manager for Fish and Game.</p> <p>I am experienced in researching and applying statutes and policies that provide guidance on maintaining quality of life for everyone in the community.</p> <p>I own property in Anchor Point and am becoming more familiar with the borough and some of the needs of my community. Currently, I am working with Enstar and the borough to bring the gas line into my neighborhood east of Chapman Elementary.</p> <p>Thank you and I look forward to meeting you.</p>

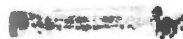
# Kenai Peninsula Borough

## Planning Department

Advisory Planning Commission Application Submitted 2022-11-01 10:57:25

APC/Seat: Funny River – Seat G (Term Expires 09/30/2025)

<b>Name</b> Michael Masters	<b>Mobile Phone</b> 907-252-4399
<b>Home Phone</b> 907-262-7670	<b>Work Phone</b>
<b>Email</b> precisionairbalance12@gmail.com	<b>Date of Birth</b> [REDACTED]
<b>SSN</b>	<b>Voter #</b>
<b>Residence Address</b> ,	<b>Mailing Address</b> 35925 KING SALMON AVE. SOLDOTNA, AK 99669
<b>How long have you lived in the area served by this Advisory Planning Commission?</b> 44 years	<b>What knowledge, experience, or expertise will you bring to this board?</b> Past Vice President of Funny River Advisory Board





# Kenai Peninsula Borough

## Planning Department

Advisory Planning Commission Application Submitted 2022-10-02 11:49:38

APC/Seat: Nikiski - Seat A (Term Expires 09/30/2023)

<b>Name</b> Tom Coursen	<b>Mobile Phone</b> 9073981000
<b>Home Phone</b> 9073353350	<b>Work Phone</b> 9077762048
<b>Email</b> coursen@acsalaska.net	<b>Date of Birth</b> [REDACTED]
<b>SSN</b>	<b>Voter #</b>
<b>Residence Address</b> 44055 Stipend Circle Kenai, Ak 99611	<b>Mailing Address</b> PO Box 598 Soldotna, Alaska 99669
<b>How long have you lived in the area served by this Advisory Planning Commission?</b> 8 years	<b>What knowledge, experience, or expertise will you bring to this board?</b> I have been a resident of Alaska my entire life. With that being said, I have seen the local area grow by leaps and bounds. I will bring experience from working and living here for 60+ years. I have seen the challenges businesses and residents face on a daily basis. I have decades of real world experiences, that text books cannot duplicate. There is a need for volunteers to get involved in the things going on here, so there will be a future for the next generations. My background in oil field work, commercial fishing and private enterprise will contribute a progressive attitude, but yet I do realize we need to grow in an orderly fashion. Not quite like the old Wild west days of years gone by.



# Kenai Peninsula Borough

## Planning Department

Advisory Planning Commission Application Submitted 2022-10-15 10:55:25

APC/Seat: Nikiski - Seat B (Term Expires 09/30/2023) \*1 application rec'd as of 10/12/22

<b>Name</b> Patricia Williams	<b>Mobile Phone</b> +1 09073981968
<b>Home Phone</b> NA	<b>Work Phone</b> NA
<b>Email</b> williamsak321@gmail.com	<b>Date of Birth</b> [REDACTED]
<b>SSN</b>	<b>Voter #</b> [REDACTED]
<b>Residence Address</b> ,	<b>Mailing Address</b> 56175 Kenai Spur Hwy Kenai, AK 99611

How long have you lived in the area served by this Advisory Planning Commission?	What knowledge, experience, or expertise will you bring to this board?
<p>since 2005</p>	<p>As a retired environmental practitioner, I will bring to this role over thirty years of professional working knowledge and education specialising in the area of environmental regulations</p> <p>Most recently, I retired in 2021 from the Kenai Peninsula Borough (KPB) where I acted as the Environmental Compliance Manager covering the Borough and the School district for five years. In this role, I was responsible for successfully covering many environmental areas such as: solid and hazardous waste, groundwater, wastewater, and environmental assessments. As a result of my knowledge and responsiveness, I built positive and cooperative working relationships with Federal, State and Local regulators as well as other KPB departments, the KPB School District and members of the public. I work well with a team or individually, and communicate well with others. I'm a reasonable and thoughtful person, and listen and consider what others have to say. I believe there is a balance between business and the environmental component, and I would like to participate in the determination of land use in my home area of Nikiski.</p> <p>My Son graduated from Nikiski Middle/High School and we have lived in Nikiski since 2005. My in-laws had property on Daniels Lake since 1992 and was split and deeded to my sister in-law and my husband and me a few years ago. We now own three properties in Nikiski and what goes on around them matters to me.</p> <p>Therefore, I believe I will bring both professional and personal interest to this role, and would make a good selection for the role of Commissioner for Land Use Determination on the Advisory Planning Commission (APC) representing the Nikiski area.</p>

How long have you lived in the area served by this Advisory Planning Commission?	What knowledge, experience, or expertise will you bring to this board?
<p>since 2005</p>	<p>As a retired environmental practitioner, I will bring to this role over thirty years of professional working knowledge and education specialising in the area of environmental regulations</p> <p>Most recently, I retired in 2021 from the Kenai Peninsula Borough (KPB) where I acted as the Environmental Compliance Manager covering the Borough and the School district for five years. In this role, I was responsible for successfully covering many environmental areas such as: solid and hazardous waste, groundwater, wastewater, and environmental assessments. As a result of my knowledge and responsiveness, I built positive and cooperative working relationships with Federal, State and Local regulators as well as other KPB departments, the KPB School District and members of the public. I work well with a team or individually, and communicate well with others. I'm a reasonable and thoughtful person, and listen and consider what others have to say. I believe there is a balance between business and the environmental component, and I would like to participate in the determination of land use in my home area of Nikiski.</p> <p>My Son graduated from Nikiski Middle/High School and we have lived in Nikiski since 2005. My in-laws had property on Daniels Lake since 1992 and was split and deeded to my sister in-law and my husband and me a few years ago. We know own three properties in Nikiski and what goes on around them matters to me.</p> <p>Therefore, I believe I will bring both professional and personal interest to this role, and would make a good selection for the role of Commissioner for Land Use Determination on the Advisory Planning Commission (APC) representing the Nikiski area.</p>



# Kenai Peninsula Borough

## Planning Department

Advisory Planning Commission Application Submitted 2022-10-25 15:15:08

APC/Seat: Nikiski - Seat C (Term Expires 09/30/2024)

<b>Name</b> Karen S. McGahan	<b>Mobile Phone</b> 9072521136
<b>Home Phone</b> 9077768240	<b>Work Phone</b>
<b>Email</b> boulderpoint@alaska.net	<b>Date of Birth</b> [REDACTED]
<b>SSN</b>	<b>Voter #</b> [REDACTED]
<b>Residence Address</b> Mile 29.3 North Road Nikiski, Alaska 99635	<b>Mailing Address</b> 54025 Kenai Spur Hwy Kenai, Alaska 99611
<b>How long have you lived in the area served by this Advisory Planning Commission?</b> 57 1/2 years	<b>What knowledge, experience, or expertise will you bring to this board?</b> I served on the first Nikiski Fire Service Area Board. I also served 9 years on the Kenai Peninsula Borough Assembly as a representative from Nikiski. My children and grandchildren were all born in Nikiski. We have 5 generations of the family here now, and I would like to be a part of the future development decisions.

# Kenai Peninsula Borough

## Planning Department

Advisory Planning Commission Application Submitted 2022-10-03 23:25:14

APC/Seat: Nikiski - Seat D (Term Expires 09/30/2024)

<b>Name</b> Lenora Niesen	<b>Mobile Phone</b> 907-244-1095
<b>Home Phone</b>	<b>Work Phone</b>
<b>Email</b> Cubwidow@gmail.com	<b>Date of Birth</b>
<b>SSN</b>	<b>Voter #</b> [REDACTED]
<b>Residence Address</b> 50092 Halbouty Road Kenai, AK 99612	<b>Mailing Address</b> PO Box 8485 Nikiski, AK 99635
<b>How long have you lived in the area served by this Advisory Planning Commission?</b> 10 years, owned land 17 years	<b>What knowledge, experience, or expertise will you bring to this board?</b> I have been a long term small business owner, awarded Small Business Person of the Year for Alaska in 2005; am an excellent researcher, communicator and mediator; am reliable and committed to ensuring the goals of the commission are met.





# Kenai Peninsula Borough

## Planning Department

Advisory Planning Commission Application Submitted 2022-10-06 09:42:22

APC/Seat: Nikiski - Seat E (Term Expires 09/30/2025)

<b>Name</b> Kelly Brewer	<b>Mobile Phone</b> 907-252-7219
<b>Home Phone</b>	<b>Work Phone</b> 907-252-7219
<b>Email</b> dbrewer@acsalaska.net	<b>Date of Birth</b> [REDACTED]
<b>SSN</b>	<b>Voter #</b>
<b>Residence Address</b> 51765 Stickleback Rd. Nikiski, AK 99645	<b>Mailing Address</b> PO Box 8223 Nikiski, AK 99635

**How long have you lived in the area served by this Advisory Planning Commission?**

27

**What knowledge, experience, or expertise will you bring to this board?**

My husband and I have owned property in Nikiski for 40 years-living in either Soldotna, Kenai or Nikiski for 51 years. Lets just say its been awhile. We have three adult children that have grown up and live in the Nikiski area. My son and both son in laws work in the Oil Industry in Nikiski. We also have nine Grandchildren that live in Nikiski, seven of which attend area public schools. Along with my resident home-we own and operate two rental dwellings in the Nikiski area.

We have owned and operated a reputable float plane service- flying on the West-side of the Cook Inlet from 1982-2002, visually seeing some of the areas development and changes from the air.

Since 2012, my husband and I have been operating a remote, tourist- oriented bear viewing/fishing lodge in our service area. It is located near the base of Mt. Redoubt.

My other work experience is with the Kenai Peninsula Borough School District, I had 12 years vested as an Indian Education Mediator/Tutor working closely with Salamatof and Kenaitze Indian tribal leaders and students, While working for KPBSD, I was fortunate enough to attend the Alaska Youth and Elderly Native Convention three different years.

I believe my work experience and 51 years living in the area has allowed me to to see the benefit from diverse development for my family and neighbors. That experience can contribute to the planning for the service area.

# Kenai Peninsula Borough

## Planning Department

Advisory Planning Commission Application Submitted 2022-10-11 11:26:16

APC/Seat: Nikiski - Seat F (Term Expires 09/30/2025)

<b>Name</b> Michael A Peek	<b>Mobile Phone</b> 907-252-1476
<b>Home Phone</b> 907-252-1476	<b>Work Phone</b> 907-776-5551
<b>Email</b> mpeek@osk-ak.com	<b>Date of Birth</b> [REDACTED]
<b>SSN</b>	<b>Voter #</b> [REDACTED]
<b>Residence Address</b> 53687 Ray ct Nikiski, AK 99635	<b>Mailing Address</b> 53687 Ray ct Kenai, Ak 99611
<b>How long have you lived in the area served by this Advisory Planning Commission?</b> 35 years	<b>What knowledge, experience, or expertise will you bring to this board?</b> was on the road board i have 16 properties in the area

1000

1000

# Kenai Peninsula Borough

## Planning Department

Advisory Planning Commission Application Submitted 2022-10-20 14:38:42

APC/Seat: Nikiski - Seat G (Term Expires 09/30/2025) \*2 applications rec'd as of 10/12/22

<b>Name</b> Jason Ross	<b>Mobile Phone</b> (907)394-5807
<b>Home Phone</b>	<b>Work Phone</b> (907)201-0216
<b>Email</b> supertrucker2b4u@yahoo.com	<b>Date of Birth</b> [REDACTED]
<b>SSN</b> 574-74-4792	<b>Voter #</b>
<b>Residence Address</b> ,	<b>Mailing Address</b> 47520 Sunflower st Kenai, Ak 99611
<b>How long have you lived in the area served by this Advisory Planning Commission?</b>  I have lived in Nikiski since 1982 except while I was in the Army for 5 years from 92-97.	<b>What knowledge, experience, or expertise will you bring to this board?</b>  Currently I am the President of the Nikiski Community Council for 4 years. Also have been on the North Road Extension Task Force since February and am the Chair. Also I am on the Kenai Peninsula Borough AGDC Advisory Task Force. I have worked with and attended many meetings regarding Nikiski Incorporation. I understand Nikiski and know many of the people here.

[REDACTED]



**MAYOR'S REPORT TO THE ASSEMBLY**

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

**FROM:** Mike Navarre, Kenai Peninsula Borough Mayor

**DATE:** November 15, 2022

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Assembly Request / Response

None

Agreements and Contracts

- a. Funny River Fire Station Compressor
- b. Change order for Hope Site Environmental Clean Up
- c. Nikiski High School lockers, Co-op Purchase Authorization
- d. Purchase of a Type 1 Ambulance for Kachemak Emergency Service Area: Under the Houston Galveston Area Council (H-GAC) Cooperative Purchasing
- e. Northern Support Services "Carehawk" Sole Source Waiver
- f. KPB Cyber Security Operations Center Contract Under NASPO Contract #NVP-2018-CLOUD-0002
- g. Totem Equipment and Supply SANY215 Sole Source Waiver
- h. Authorization to Award a Contract for ITB23-013 Kenai, Nikiski, Sterling Transfer Facilities Operation and Maintenance 2023.
- i. Authorization to Award a Contract for ITB23-012 Seward Transfer Facilities Operations and Maintenance 2023
- j. Transfer Additional Road Funds to Sport Lake, Hakala, Cotman Dr.

Other

- a. Kachemak City All Hazards Mitigation Plan 2022 Update

Page -2-  
Date: November 10, 2020  
To: Members, Kenai Peninsula Borough Assembly  
RE: Mayor's Report

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Contractor's/Consultant's Printed Name: <b>NORCOAST MECHANICAL, INC.</b>	PROPOSAL TO CONTRACT FOR SERVICES <b>KENAI PENINSULA BOROUGH</b> THIS PROPOSAL BECOMES A CONTRACT WHEN ACCEPTED AND SIGNED BY THE MAYOR OR HIS DESIGNATED OFFICIAL	PURCHASING & CONTRACTING DEPARTMENT 47140 E Poppy Lane Soldotna, Alaska 99669 (907) 714-2260
Contractor's/Consultant's Fed. Tax ID #: <b>ON FILE</b>		
Job/Service Provided: <b>FUNNY RIVER FIRE STATION COMPRESSOR &amp; AIR DROPS</b>		
CONTRACTOR/CONSULTANT WILL PROVIDE THE KENAI PENINSULA BOROUGH THE FOLLOWING SERVICE(S) CONTRACTOR SHALL SUPPLY AND INSTALL A NEW 80 GALLON INGERSOLL RAND AIR COMPRESSOR INCLUDING RUNNING AIR AND POWER LINES TO THE LEFT SIDE OF EACH APPRATUS BAY AT THE FUNNY RIVER FIRE STATION PER THE RFQ DATED AUGUST 10, 2022.		
ACCOUNT DISTRIBUTION: <u>443.51610.23463.43780</u>		
DEPARTMENT/SERVICE AREA: <u>MAINTENANCE DEPARTMENT</u>		
Contractor's/Consultant's compensation will be: <b>THIRTY-FIVE THOUSAND AND NO/100.....</b>		
Not to exceed \$ <b>35,000.00</b>		
Insurance, if required: Auto \$ <u>1,000,000</u> CGL \$ <u>1,000,000</u> E & O \$ <u>N/A</u>		
Time schedule for performance will be <b>JANUARY 30, 2023.</b>		
The following attachments are incorporated herein by reference: <b>RFQ DATED AUGUST 10, 2022; CONTRACTOR'S QUOTE DATED SEPTEMBER 28, 2022; TAX COMPLIANCE; INSURANCE CERTIFICATE</b>		
BY SIGNING BELOW, THE CONTRACTOR/CONSULTANT HEREBY AFFIRMS THAT HE OR SHE HAS READ AND ACCEPTS ALL TERMS AND CONDITIONS OF THIS CONTRACT INCLUDING THE PROVISIONS CONTAINED ON THE REVERSE OF THIS FORM  CONTRACTOR/CONSULTANT SIGNATURE <u>X <i>Steve Cox</i></u> DATE <u>10/21/2022</u>		CONTRACTOR/CONSULTANT ADDRESS & PHONE NUMBER: <b>NORCOAST MECHANICAL, INC.</b> <b>6136 MACKAY STREET</b> <b>ANCHORAGE, AK 99518</b>
RECOMMENDED BY: <u><i>Thomas Nelson</i></u>	APPROVED AS TO FORM: <u><i>John Hedges</i></u>	ACCEPTANCE BY KENAI PENINSULA BOROUGH: PURCHASE ORDER NO. <u>23-1548</u>
DEPARTMENT DIRECTOR OR DESIGNEE	PURCHASING & CONTRACTING	MAYOR OR DESIGNATED OFFICIAL
10/21/2022 DATE	10/25/2022 DATE	10/25/2022 DATE



**Section 1. Execution of This Contract.** This contract is not valid until properly signed by the parties.

**Section 2. Independent Contractor/Consultant.** The Contractor/Consultant shall provide services as an independent contractor/consultant to the borough. Except as this contract provides otherwise, the borough shall not supervise or direct the Contractor/Consultant. The borough may administer this contract and monitor the Contractor's/Consultant's performance.

**Section 3. Compliance With Laws.** The Contractor/Consultant shall comply with all statutes, ordinances, and regulations governing its performance, post all required notices, and obtain all permits, licenses, and other entitlements necessary to its performance. The Contractor/Consultant shall pay all taxes related to its performance and shall be current on all borough taxes at the time of entering this contract. The Contractor/Consultant shall acquire and maintain in good standing all permits, licenses; and other entitlements necessary to the legal performance of this contract.

**Section 4. Equal Employment Opportunity.**

- A. The Contractor/Consultant will not discriminate against any applicant for employment because of race, color, religion, national origin, ancestry, age, sex, marital status, or mental or physical handicap. The Contractor/Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to the characteristics listed above. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting or recruiting advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor/Consultant will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The Contractor/Consultant shall state in all solicitations or advertisements for employees to work on contract jobs, that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex, marital status, or physical or mental handicap.
- C. The Contractor/Consultant shall include the provisions of subsections A and B of this section in every subcontract or purchase order under this contract, so as to be binding upon every subcontractor or vendor of the Contractor/Consultant under this contract.

**Section 5. Insurance.** During the term of this contract the Contractor/Consultant shall maintain a policy of workers' compensation and employers' liability insurance as required by law. Contractor/Consultant shall also be required to carry additional insurance if so indicated on this form. Any such insurance shall be primary and exclusive of borough insurance. If liability insurance is required, the borough and school district, as applicable, shall be named as an additional insured on such policy with respect to the performance or failure to perform under this contract.

**Section 6. Assignments.** Unless the borough provides otherwise in writing, any assignment by the Contractor/Consultant of its interest in any part of this contract or any delegation of its duties shall be void, and permit the borough to terminate this contract without liability for work performed.

**Section 7. Ownership, Publication, Reproduction, and Use of Material.** Unless the borough provides otherwise in writing, all data, documents, and materials that the Contractor/Consultant produces shall be property of the borough, which shall retain the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents, or other materials. This exclusive right does not apply to any materials presently in the public domain or not subject to copyright.

**Section 8. Indemnity.** Consultant shall indemnify, defend and hold the Borough, its elected and appointed officers, Consultants, agents and employees who are directly responsible to the Borough (collectively "the Borough") harmless from and against any and all claims, demands, suits or liability of any nature, kind or character whatsoever under this Agreement, including costs, expenses and attorneys fees, resulting from negligent acts, errors, or omissions of the Consultant or Consultant's officers, agents, employees, partners, Consultants, and sub-consultants who are directly responsible to the Consultant, (collectively "Consultant"). Consultant is not required to indemnify, defend, or hold harmless the Borough for a claim of, or liability for, independent negligent acts, errors, and omissions of the Borough. If there is a claim of, or liability for, a joint negligent act, error or omission of Consultant and the Borough, the indemnification, defense and hold harmless obligation of this Agreement shall be apportioned on a comparative fault basis. For purposes of this Agreement "independent negligent acts, errors, and omissions" means negligence other than in the Borough's selection, administration, monitoring, or controlling of Consultant, or in approving or accepting Consultant's work.

**Section 9. Termination.**

This contract may be terminated:

- A. For cause immediately;
- B. By the borough for its convenience upon fifteen (15) days' written notice to the Contractor/Consultant.

Upon termination and the Contractor's/Consultant's furnishing to the borough all finished and unfinished data, documents or other materials prepared under the contract, the borough shall pay the Contractor/Consultant for all satisfactory work performed before termination.

**Section 10. Nonwaiver.** Either party failing to enforce a provision of this contract does not waive the provision or affect the validity of the contract or a party's right to enforce any provision of the contract.

**Section 11. Jurisdiction and Choice of Law.** Any civil action arising from this contract shall be brought in the trial courts for the Third Judicial District of the State of Alaska at Kenai. The laws of the State of Alaska govern this contract.

**Section 12. Contract Interpretation.** In interpreting this contract the following documents are incorporated herein by reference and shall be given the following order of precedence:

- A. The General Conditions;
- B. Provisions on the other side of this form;
- C. The Contractor's/Consultant's written proposal as accepted by the borough;
- D. The borough's written request for proposals or invitation to bid.
- E. Any other document incorporated by reference.

**Section 13. Integration.** This document and all documents incorporated in it by reference are the entire agreement of the parties and supersede all previous communications, representations or agreements regarding this subject, whether oral or written, between the parties.



## REVISION #1

**BID FORM**  
**Funny River Fire Compressed Air**  
**Page 1 of 2**

**BIDDER ACKNOWLEDGEMENT**

1. To accept the provisions of the Instructions to Bidders.
2. To furnish all labor and materials and to accomplish the works and/or services in accordance with the Bid Documents.
3. The undersigned declares, under penalty of perjury under the laws of the United States, that neither he/she nor the firm, association or corporation of which he/she is a member, has, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this bid.

By signing below, the Bidder is hereby certifying to the following:

**ADDENDA ACKNOWLEDGEMENT**

In submitting this bid, I certify that I have examined the Bid and Specification documents, have received Addenda Nos.

☐ ☐ ☐ ☐ ☒ 1, and have included their provisions in my bid.

**SIGNATURE REQUIREMENT**

Firm Name Norcoast Mechanical

Address 6136 Mackay St.

City Anchorage

State AK

Zip 99518

Representative Stephen Cox

Title VP

Email Address steve@norcoastmechanical.com

Telephone 907-562-2125

Fax 907-561-2461

The undersigned has read the foregoing and hereby agrees to the conditions stated therein by affixing his/her signature below:

*Stephen Cox*

**Signature of Authorized Company Representative**

9-28-22

**Date**

**Bidder Checklist:**

Bid Form: X

Bid Schedule (if applicable) N/A

Tax Compliance Form upon award

Bid Bond (if applicable) N/A

**Enter Licensing Information:**

Alaska Business License # 902076

Contractor License (if applicable) # CON2422

Specialty Contractor License # (if applicable) CONE32707

**BID FORM**  
**Funny River Fire Compressed Air**  
**Page 2 of 2**

**BID SCHEDULE**

Pay Item No.	Pay Item Description	Pay Unit/ UOM	Quantity	Unit Bid Price	Bid Amount
<b>BASE BID</b>					
1	Material, equipment and qualified personnel to provide and install compressed air lines	Ea.	1		\$35,000.00
2	Spare hose reel with 50' or air and powerline for backup	Ea.	1		N/A
<b>TOTAL EXTENDED BID</b>				<b>\$ 35,000.00</b>	

Revision #1: Per request, this proposal is revised to for KPB to provide the Air/Electric reels which will be installed by Norcoast, all other terms of the RFP remain the same

Norcoast Mechanical  
 Company Name





# CERTIFICATE OF LIABILITY INSURANCE

 DATE (MM/DD/YYYY)  
06/07/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	Parker, Smith & Feek, LLC. 3800 Centerpoint Drive, Suite 601 Anchorage, AK 99503	CONTACT NAME:		
		PHONE (A/C, No, Ext):	907-562-2225	FAX (A/C, No):
		E-MAIL ADDRESS:		
		INSURER(S) AFFORDING COVERAGE		NAIC #
		INSURER A : Alaska National Ins. Co.		
		INSURER B : ** Nautilus Insurance Company		**
		INSURER C :		
		INSURER D :		
		INSURER E :		
		INSURER F :		

COVERAGES	CERTIFICATE NUMBER:	REVISION NUMBER:
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.		

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	X		21LLS59321	12/31/2021	12/31/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	X		21LAS59321	12/31/2021	12/31/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			21LLU59321	12/31/2021	12/31/2022	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N <input checked="" type="checkbox"/> N <input type="checkbox"/> N/A		N/A	21LWS59321	12/31/2021	12/31/2022	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Professional Liability			CPP202062515	12/31/2021	12/31/2022	\$1,000,000 Each Claim / \$1,000,000 Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
Skyview Boiler Project

Kenai Peninsula Borough/School District is an additional insured on the general liability and automobile policies per the attached endorsements/forms... (See Attached Description)

CERTIFICATE HOLDER	CANCELLATION
Kenai Peninsula Borough/School District 144 Binkley Street Soldotna, AK 99669	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 

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## DESCRIPTIONS (Continued from Page 1)

\*\*THIS IS EVIDENCE OF INSURANCE PROCURED AND DEVELOPED UNDER THE ALASKA SURPLUS LINES LAW, AS 21.34. IT IS NOT COVERED BY THE ALASKA INSURANCE GUARANTY ASSOCIATION ACT, AS 21.80.

\*\*Surplus Lines Broker for Company B: Brown & Riding






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**CONTRACTORS' GENERAL LIABILITY ENHANCEMENT ENDORSEMENT**


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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

Coverage afforded under this extension of coverage endorsement does not apply to any person or organization covered as an additional insured on any other endorsement now or hereafter attached to this Coverage Part.

**SCHEDULE OF COVERAGES ARE SUMMARIZED BELOW**

**1. Miscellaneous Additional Insureds**

8 additional insured extensions.

**Primary and Noncontributory Insurance**

**2. Damage To Premises Rented to You**

Limit increased to \$500,000.

**3. Medical Payments**

Limits increased to \$15,000.

Reporting period increased to three years from the date of accident.

**4. Non-owned Watercraft**

Increased to 50 feet.

**5. Supplementary Payments**

Cost of bail bonds increased to \$10,000.

Daily loss of earnings increased to \$500.

**6. Newly Formed Or Acquired Organizations**

Coverage extended to the end of the policy period or the next anniversary of this policy's effective date.

**7. Liberalization Clause**

**8. Unintentional Failure To Disclose Hazards**

**9. Notice of Occurrence**

**10. Broad Knowledge of Occurrence**

**11. Bodily Injury - Extension of Coverage**

**12. Expected Or Intended Injury**

Reasonable force - bodily injury or property damage.

**13. Blanket Waiver of Subrogation**

Waiver of subrogation where required by written contract or written agreement.

**14. In Rem Actions**

**1. MISCELLANEOUS ADDITIONAL INSURED**

**Section II Who Is An Insured** is amended to include as an additional Insured any person or organization described in Paragraphs 2.a. through 2.h. below whom you are required to add as an additional insured on this policy under a written contract or written agreement. However, the written contract or written agreement must be:

1. Currently in effect or becoming effective during the term of this policy; and

2. Executed prior to the "bodily injury", "property damage" or "personal injury and advertising injury", but

Only the following persons or organizations are additional insureds under this endorsement and coverage provided to such additional insureds is limited as provided herein:

**a. State or Governmental Agency or Subdivision or Political Subdivisions**

Any state or governmental agency or subdivision or political subdivision that has issued a permit in connection with operations performed by you or on your behalf and that you are required by any ordinance, law or building code to include as an additional insured on this coverage part is an additional insured, but only with respect to liability for "bodily injury", "property damage", "personal and advertising injury" arising out of such operations.





The insurance provided to such state or political subdivision does not apply to any "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for that state or political subdivision.

**b. Controlling Interest**

Any persons or organizations with a controlling interest in you but only with respect to their liability arising out of:

- (1) Their financial control of you, or
- (2) Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for such additional insured.

**c. Managers or Lessors of Premises**

A manager or lessor of premises but only with respect to liability arising out of the ownership, maintenance or use of that specific part of the premises leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

**d. Mortgagee, Assignee or Receiver**

A mortgagee, assignee or receiver but only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of a premises by you.

This insurance does not apply to structural alterations, new construction or demolition operations performed by or for such additional insured.

**e. Owners or Other Interests From Whom Land Has Been Leased**

An owner or other interest from whom land has been leased by you but only with respect to liability arising out of the ownership, maintenance or use of that specific part of the land leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

**f. Co-owner of Insured Premises**

A co-owner of a premises co-owned by you and covered under this insurance but only with respect to the co-owners liability as co-owner of such premises.

**g. Lessor of Equipment**

Any person or organization from whom you lease equipment. Such person or organization is an additional insured only with respect to their liability for "bodily injury", "property damage" or "personal and Advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization. A person's or organization's status as an additional insured under this endorsement ends when their written contract or written agreement with you for such leased equipment ends.

With respect to the insurance afforded these additional insureds, the following additional exclusions apply:

This insurance does not apply:

- (1) To any "occurrence" which takes place after the equipment lease expires; or





- (2) To "bodily injury", "property damage", or "personal and advertising injury" arising out of the sole negligence of such additional insured.

#### **h. Owners, Lessees or Contractors**

- (1) Such person or organization is an additional insured for "bodily injury", "property damage" and "personal and advertising injury" if, and only to the extent that, the injury or damage is caused by negligent acts or omissions of you or your subcontractor in the performance of "your work" to which the written contract applies. This person or organization does not qualify as an additional insured with respect to injury or damage caused in whole or in part by independent negligent acts or omissions of such person or organization.
- (2) However, this insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of an architect's, engineer's, or surveyor's rendering of or failure to render any professional services including:
  - i. the preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, design or specifications; and
  - ii. supervisory, inspection, or engineering services.
- (3) The insurance provided to this additional insured, does not cover "bodily injury" or "property damage" caused by your negligent acts and omissions in the performance of "your work" that occurs within the "products-completed operations hazard", unless the written contract contains a specific requirement that you procure completed operations coverage or coverage within the "products-completed operations hazard" for the

additional insured. However, even if coverage within the "products-completed operations hazard" is required by the written contract, such coverage is available to the additional insured only if the "bodily injury" or "property damage" occurs prior to the end of the time period during which you are required by the written contract to provide such coverage or the expiration date of the policy, whichever comes first.

Any insurance provided to an additional insured designated under Paragraphs 2.a. through 2.g. above does not apply to "bodily injury" or "property damage" included within the products-completed operations hazard."

#### **Primary And Noncontributory Insurance**

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

**Section III - Limits of Insurance**, the following is added:

With respect to the insurance afforded to the additional insureds described in Paragraphs a. through h. above, the most we will pay on behalf of such additional insured is the amount of insurance:

- (1) Required by the contract or agreement; or
- (2) Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.





This provision shall not increase the applicable Limits of Insurance shown in the Declaration.

## 2. Damage To Premises Rented to You

**SECTION III – LIMITS OF INSURANCE,** Paragraph 6. is replaced by the following:

6. Subject to Paragraph 5. above, the Damage to Premises Rented to You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.

If a limit is shown for Damage to Premises Rented to You the most we will pay under Coverage A for damages because of "property damage" to any one premises is the Limit shown in the Declarations or \$500,000, whichever is greater.

## 3. MEDICAL PAYMENTS

- A. **Section III – Limits of Insurance,** Paragraph 7. is replaced by the following:

7. Subject to Paragraph 5. above the Medical Expense Limit is the most we will pay under **Coverage C** for all medical expenses because of "bodily injury" sustained by any one person.

If a limit is shown for Medical Expense in the Declarations the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person is the Limit shown in the Declarations or \$15,000, whichever is greater.

- B. This provision 5. (Medical Payments) does not apply if **Section I - Coverage C Medical Payments** is excluded either by the provisions of the Coverage Part or by endorsement.
- C. Paragraph 1.a.(3)(b) of **Section I - Coverage C - Medical Payments**, is replaced by the following:

- (b) The expenses are incurred and reported to us within three years of the date of the accident; and

## 4. NON-OWNED WATERCRAFT

- A. If endorsement **CG 21 09, CG 21 10, CG 24 50, or CG 24 51** is attached to the policy, Paragraph A. 2. g. (2) (b) is replaced by the following:

- (b) A watercraft that you do not own that is:

- (i) Less than 50 feet long; and
- (ii) Not being used to carry persons or property for a charge.

- B. If Paragraph A. does not apply, Paragraph g. (2) of 2. **EXCLUSION** under **SECTION I – COVERAGES, COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is replaced by the following:

- (2) A watercraft that you do not own that is:

- (a) Less than 50 feet long; and
- (b) Not being used to carry persons or property for a charge.

## 5. SUPPLEMENTARY PAYMENTS

- A. Under **Section I - Supplementary Payments - Coverage A and B**, Paragraph 1.b., the limit of \$250 shown for the cost of bail bonds is replaced by \$10,000;
- B. In Paragraph 1.d., the limit of \$250 shown for daily loss of earnings is replaced by \$500.

## 6. NEWLY FORMED OR ACQUIRED ORGANIZATIONS

Paragraph 3.a. of **Section II - Who Is An Insured** is deleted and replaced by the following:

Coverage under this provision is afforded only until the end of the policy period or the next anniversary of this policy's effective date after you acquire or form the organization, whichever is earlier.





## 7. LIBERALIZATION CLAUSE

If we adopt a change in our forms or rules which would broaden coverage for contractors under this endorsement without an additional premium charge, your policy will automatically provide the additional coverages as of the date the revision is effective in your state.

## 8. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS – Paragraph 6. – Representations** is replaced by the following:

### 6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

The unintentional omission of, or unintentional error in, any information you provided to us which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable laws and regulations.

## 9. NOTICE OF OCCURRENCE

The following is added to Paragraph 2. of **Section IV - Commercial General Liability Conditions - Duties In The Event of Occurrence, Offense, Claim or Suit:**

Your rights under this Coverage Part will not be prejudiced if you fail to give us notice of an "occurrence", offense, claim or "suit" and that failure is solely due to your reasonable belief that the "bodily injury" or "property damage" is not covered under this Coverage Part. However, you shall give written notice of this "occurrence", offense, claim or "suit" to us as soon as you are aware that this insurance may apply to such "occurrence", offense, claim or "suit."

## 10. BROAD KNOWLEDGE OF OCCURRENCE

The following is added to Paragraph 2. of **Section IV - Commercial General Liability Conditions - Duties in The Event of Occurrence, Offense, Claim or Suit:**

You must give us or our authorized representative notice of an "occurrence", offense, claim, or "suit" only when the "occurrence", offense, claim or "suit" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership;
- (3) An executive officer or the employee designated by you to give such notice, if you are a corporation; or
- (4) A manager, if you are a limited liability company.

## 11. EXPANDED BODILY INJURY

**Section V - Definitions**, the definition of "bodily injury" is changed to read:

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury by that person at any time which results as a consequence of the bodily injury, sickness or disease.

## 12. EXPECTED OR INTENDED INJURY

Exclusion a. of **Section I - Coverage A - Bodily Injury and Property Damage Liability** is replaced by the following:

- a. "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.



### 13. BLANKET WAIVER OF SUBROGATION

The **Transfer Of Rights Of Recovery Against Others To Us Condition (Section IV - Commercial General Liability Conditions)** is amended by the addition of the following:

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of:

1. Your ongoing operations; or
2. "Your work" included in the "products-completed operations hazard."

However, this waiver applies only when you have agreed in writing to waive such rights of recovery in a contract or agreement, and only if the contract or agreement:

1. Is in effect or becomes effective during the term of this policy; and
2. Was executed prior to loss.

### 14. IN REM ACTIONS

Any action in rem against any vessel owned, operated by or for, or chartered by or for you will be treated in the same manner as though the action were in personam against you.

This endorsement changes the policy to which it is attached and, unless otherwise stated, is effective on the date issued at 12:01 A.M. standard time at your mailing address shown in the policy. **The information below is required only when this endorsement is issued subsequent to commencement of the policy.**

Endorsement Effective

Policy No.

Insured

Endorsement No.

Countersigned By \_\_\_\_\_

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**BUSINESS AUTO COVERAGE ENHANCEMENT ENDORSEMENT**


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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

Various provisions in this endorsement restrict coverage. Read the entire policy carefully to determine rights, duties, and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us", and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION V – DEFINITIONS** in the Business Auto Coverage Form.

The coverages provided by this endorsement apply per "accident" and, unless otherwise specified, are subject to all of the terms, conditions, exclusions and deductible provisions of the policy, to which it is attached.

**SECTION II – COVERED AUTO LIABILITY COVERAGE**, Paragraph A.1. Who Is An Insured is amended to include:

- d. Any "employee" of yours while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.
- e. Any person or organization for whom you have agreed in writing to provide insurance such as is afforded by this Coverage Form, but only with respect to liability arising out of the ownership, maintenance or use of "autos" covered by this policy. If such person or organization has other insurance then this insurance is primary to and we will not seek contribution from the other insurance.

**SECTION IV – Business Auto Conditions**, Paragraph A. 5. – **Transfer of Rights of Recovery Against Others To Us** is amended to include:

**5. Transfer of Rights of Recovery Against Others to Us**

This condition does not apply to any person(s) or organization(s) to the extent that subrogation against that person or organization is waived prior to the "accident" or the "loss" under a contract with that person or organization.

**SECTION II – COVERED AUTO LIABILITY COVERAGE**, Paragraph A.2.a. (2) – **Supplementary Payments** is replaced by the following:

- (2) Up to \$10,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

**SECTION II – COVERED AUTO LIABILITY COVERAGE**, Paragraph A.2.a. (4) – **Supplementary Payments** is replaced by the following:

- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.



**SECTION II – COVERED AUTO LIABILITY COVERAGE, Paragraph A.2.c. – Voluntary Property Damage is added as follows:**

**c. Voluntary Property Damage**

At your written request, we may make a voluntary payment for Property Damage caused by an "insured", but without liability to a third party, up to \$25,000. We will not make a Voluntary Property Damage payment to anyone who is an "insured" under this policy.

**SECTION III – PHYSICAL DAMAGE COVERAGE, Paragraph A.2. – Towing is replaced by the following:**

**Towing**

We will pay up to \$500 for towing and labor costs incurred each time a covered "auto" that is a:

- a. Private passenger;
- b. Truck;
- c. Pick-up truck;
- d. Panel ; or
- e. Van

type vehicle under 20,000 lbs. of Gross Vehicle Weight is disabled. However, the labor must be performed at place of disablement.

**SECTION III – PHYSICAL DAMAGE COVERAGE, Paragraph A.3. – Glass Breakage – Hitting a Bird or Animal – Falling Objects or Missiles is replaced by the following:**

**Glass Breakage – Hitting a Bird or Animal – Falling Objects or Missiles**

If you carry Comprehensive Coverage for the damaged covered "auto", we will pay the following under Comprehensive Coverage:

- a. Glass Breakage;
- b. "Loss" caused by hitting a bird or animal; and

- c. "Loss" caused by falling objects or missiles.

However, you have the option of having glass breakage caused by a covered "auto's" collision or overturn considered a "loss" under Collision Coverage.

**Glass Repair – Waiver of Deductible**

No deductible applies to glass breakage, if the glass is repaired rather than replaced.

**SECTION III – PHYSICAL DAMAGE COVERAGE, Paragraph A.4.a. – Transportation Expenses is replaced by the following:**

**a. Transportation Expenses**

We will pay up to \$200 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" that is a:

- (1) Private passenger;
- (2) Truck;
- (3) Pick-up truck;
- (4) Panel; or
- (5) Van

type vehicle under 20,000 lbs. of Gross Vehicle Weight. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".



**SECTION III – PHYSICAL DAMAGE COVERAGE,  
Paragraph A.4.b. – Loss of Use Expenses is  
replaced by the following:**

**b. Loss of Use Expenses – Hired, Rented,  
or Borrowed Automobiles**

We will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle hired, rented or borrowed without a driver under a written rental contract or agreement. We will pay for loss of use expenses, if caused by:

- (1) Other than Collision, only if the Declarations indicate that Comprehensive Coverage is provided for the vehicle withdrawn from service.
- (2) Specified Causes of Loss only if the Declarations indicate that Specified Causes of Loss Coverage is provided for the vehicle withdrawn from service.
- (3) Collision only if the Declarations indicate that Collision Coverage is provided for the vehicle withdrawn from service.

However, the most we will pay for any expenses for loss of use is \$200 per day, to a maximum of \$1,500.

**SECTION III – PHYSICAL DAMAGE COVERAGE,  
Paragraph A.4.c. – Non-Transportation Loss of Use  
Expenses is added as follows:**

**c. Non-Transportation Loss of Use  
Expenses**

We will pay up to \$2,000 for non-transportation expense incurred by you, because of "loss" to a covered "auto", if caused by:

- (1) Other than Collision, only if the Declarations indicate that Comprehensive Coverage is provided for the "auto" withdrawn from service;

- (2) Specified Causes of Loss only if the Declarations indicate that Specified Causes of Loss Coverage is provided for the "auto" withdrawn from service;  
or
- (3) Collision only if the Declarations indicate that Collision Coverage is provided for the "auto" withdrawn from service.

**SECTION III – PHYSICAL DAMAGE COVERAGE,  
Paragraph A.4.d. – Airbag Coverage is added as  
follows:**

**d. Airbag Coverage**

We will pay for the cost to repair, replace, or reset an airbag that inflates for any reason other than as a result of a collision, if the Declarations indicate that the covered "auto" has Comprehensive Coverage or Specified Causes of Loss Coverage.

**SECTION III – PHYSICAL DAMAGE COVERAGE,  
Paragraph A.4.e. – Rental Reimbursement  
Coverage is added as follows:**

**e. Rental Reimbursement Coverage**

We will pay up to \$75 per day for rental reimbursement expenses incurred by you for the rental of an "auto" because of "loss" to a covered "auto" that is a:

- (1) Private Passenger;
- (2) Truck;
- (3) Pick-up truck;
- (4) Panel; or
- (5) Van

type vehicle under 20,000 lbs. of Gross Vehicle Weight. Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto". No deductibles apply to this coverage.





(1) We will pay only for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the following number of days:

(a) The number of days reasonably required to repair or replace the covered "auto".

(b) 30 days.

(2) This coverage does not apply while there are spare or reserve "autos" available to you for your operations.

(3) The Rental Reimbursement Coverage described above does not apply to a covered "auto" that is described or designated as a covered "auto" on Rental Reimbursement Coverage Form CA 99 23.

**SECTION IV – BUSINESS AUTO CONDITIONS – Paragraph B.2. – Concealment, Misrepresentation Or Fraud is amended by adding Unintentional Failure to Disclose Hazards at the end of Paragraph B.2. as follows:**

**Unintentional Failure to Disclose Hazards**

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

**SECTION IV – BUSINESS AUTO CONDITIONS – Paragraph B.5.b. – Other Insurance is replaced by the following:**

b. For **Hired Auto Physical Damage Coverage**, the following are deemed to be covered "autos" you own:

(1) Any covered "auto" you lease, hire, rent, or borrow; and

(2) Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

**SECTION V – DEFINITIONS – Paragraph C. – "Bodily injury" is replaced by the following:**

C. "Bodily injury" means bodily injury, sickness or disease sustained by a person including death or mental anguish resulting from any of these. Mental anguish means any type of mental or emotional illness or disease

This endorsement changes the policy to which it is attached and, unless otherwise stated, is effective on the date issued at 12:01 A.M. standard time at your mailing address shown in the policy. The information below is required only when this endorsement is issued subsequent to commencement of the policy.

Endorsement Effective

Policy No.

Insured

Endorsement No. 3

Countersigned By \_\_\_\_\_

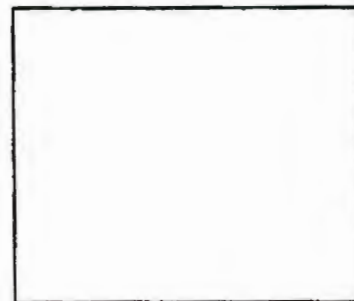
# Tax Compliance Certification

## Kenai Peninsula Borough

### Finance Department

144 N. Binkley Street  
Soldotna, Alaska 99669-7599  
www.kpb.us

Phone: (907) 714-2197  
or: (907) 714-2175  
Fax: (907) 714-2376



1.) Fill in all information requested. 2.) Sign and date. 3.) Submit with solicitation, or other.

For Official Use Only

Reason for Certificate: <input type="checkbox"/> Solicitation <input checked="" type="checkbox"/> Other:		For Department:	
		Dept. Contact: <b>Steve Cox</b>	
Business Name:		<b>Norcoast Mechanical, Inc</b>	
Business Type:		<input type="checkbox"/> Individual <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other:	
Owner Name(s):		<b>Stephen Cox</b>	
Business Mailing Address:		<b>6136 Mackay Street, Anchorage, Ak 99518</b>	
Business Telephone:		Business Fax:	
<b>907-562-2125</b>		<b>907-561-2461</b>	
Email:		<b>steve@norcoastmechanical.com</b>	

As a business or individual, have you ever conducted business or owned real or personal property within the Kenai Peninsula Borough? (If yes, please supply the following account numbers and sign below. If no, please sign below.)  
☐ Yes    ☒ No    Kenai Peninsula Borough Code of Ordinances, Chapter 5.28.140, requires that businesses/individuals contracting to do business with the Kenai Peninsula Borough be in compliance with Borough tax provisions. No contract will be awarded to any individual or business who is found to be in violation of the Borough Code of Ordinances in the several areas of taxation.

REAL/PERSONAL/BUSINESS PROPERTY ACCOUNTS	
ACCT. NO.	ACCT. NAME
N/A	/

*Hannah Neenan*  
KPB Finance Department (signature required)

TAX ACCOUNTS/STATUS (TO BE COMPLETED BY KPB)	
YEAR LAST PAID	BALANCE DUE
/	/

10/19/22    ☒ In Compliance    ☐ Not In Compliance  
Date

SALES TAX ACCOUNTS	
ACCT. NO.	ACCT. NAME
207339	Norcoast Mechanical, Inc

*Hannah Neenan*  
KPB Sales Tax Division (signature required)

TAX ACCOUNTS/STATUS (TO BE COMPLETED BY KPB)		
FILED THRU	M/F's	BALANCE DUE
09/2022	Ø	Ø

10/19/22    ☒ In Compliance    ☐ Not In Compliance  
Date

CERTIFICATION: I, Stephen Cox the Vice President hereby certify that, to the  
(Name of Applicant) (Title)  
 best of my knowledge, the above information is correct as of 10-18-2022.  
(Date)

*[Signature]*  
Signature of Applicant (Required)

IF ANY BUSINESS IS CONDUCTED OR IS AWARDED A BID WITHIN THE KENAI PENINSULA BOROUGH YOU MUST BE REGISTERED TO COLLECT SALES TAX. THE SALES TAX DEPARTMENT CAN BE REACHED AT (907) 714-2175.





## Maintenance Department

47140 E. Poppy Lane, Soldotna, Alaska 99669 • (907) 262-4011 • (907) 262-5882 Fax

Charlie Pierce  
Borough Mayor

**TO:** All Prospective Participants

**FROM:** Nick Kemp, Maintenance Foreman

**DATE:** 8/10/2022

**SUBJECT:** Fire Station Compressor and air drops

This Request for Quote (RFQ) is intended to provide potential vendors with information regarding the services/materials being sought which are estimated to cost **less than \$40,000.**

### Timeline

RFQ Release Date .....8/10/2022

Site Visit.....Upon Request

Final Questions Due .....8/22/2022, by close of business

Quotes Due at KPB .....8/30/2022, by close of business

Completion Date .....1/30/2023

Scope of Work: The scope of work shall include the supply and installation of a new 80-gallon Ingersoll Rand vertically oriented air compressor, including running air and power lines to the left side of each apparatus bay at the Funny River Fire Station. Along with the airlines at each bay please provide a fixed position tandem retractable air and power line reel spooled with no less than 50' of 3/8" kink free flexible air hose. Air and power lines reels shall be able to operate independent of each other. At each hose please supply a shut off valve in the line to deactivate the individual hose reels should the need arise.

Licensing: Section 43.70.020 of the Alaska State Statutes requires that all businesses wishing to engage in business in Alaska obtain a license. All suppliers/contractors are required to furnish, a current, valid Alaska Business License Number and, if applicable, a current, valid Contractor's License Number, Specialty Contractor License Number, etc. prior to entering into a contract.

Tax Compliance: Kenai Peninsula Borough Code requires that businesses or individuals contracting to do business with the Kenai Peninsula Borough shall remain in compliance with Borough tax provisions. No contract will be awarded to any individual or business who is found to be in violation of the Borough Code of Ordinances in the several areas of taxation.

Local Preference: A five (5%) percent local preference policy has been established and may be applied to all purchases under \$50,000. A local business is defined as: any business or company

having a physical presence in the Borough, registered in the Borough to collect sales tax and locally provides the products and services sought.

Site Visit (if applicable):

**Upon request**

Questions: Questions regarding this project should be directed to **Nick Kemp** and submitted via email to [maintenance@kpb.us](mailto:maintenance@kpb.us) or faxed to **907-262-5882**. Questions must be submitted by close of business **8/22/2022**.

Award of Contract: It is the intent of the Borough to award a contract to the lowest responsive and responsible bidder for services offered.

Contracts: The work will be accomplished through a Borough short form contract (sample attached). This contract **may** be subject to the provisions of State of Alaska, Title 36, Minimum Wage Rates and Notice of Work/Notice of Completion Requirements and will require certificates of insurance. Insurance requirements are \$1,000,000 for both commercial general liability (CGL) and auto, \$1,000,000 for errors and omissions (E&O) if required by contract.

Quote Due Date/Time: Quotes may be faxed to **907-262-5882** or emailed to [maintenance@kpb.us](mailto:maintenance@kpb.us) Attn. **Nick Kemp**. Quotes must be received no later than close of business on **8/30/2022**.

Attachments: Along with the drawings, specifications and necessary forms for the above referenced project..

1. Specifications/Scope of Work
2. Drawing (**4 pages**)
3. Quote Form
4. Sample Short Form Contract
5. Tax Compliance



Funny River Fire Station-Air drops  
Soldotna, AK

Kenai Peninsula Borough Maintenance  
Nov. 30, 21August 9, 2022

## SECTION 22 00 00

### COMPRESSED AIR PLUMBING

#### PART 1 GENERAL

##### 1.1 SUMMARY

- A. Provide necessary tools, equipment and qualified personnel to supply and install tandem air and powerline drops at 7 locations. Supplied with hose reels that are ceiling mounted. This would provide the needed air and power drops required in all parking bays of the Funny River Fire Station. Air compressor supplied shall be Ingersoll Rand SS3L3 or approved equal.

##### 1.2 SUBMITTALS

- A. Product Data: Submit manufacturer's product data and installation instructions for assorted materials and product used on this project.
- B. Shop Drawings: Shop drawings for compressed airlines is not required.
- C. Operation and Maintenance Data: Submit manufacturer's operation and maintenance data, including operating instructions, list of spare parts and maintenance schedule.

##### 1.3 QUALITY ASSURANCE

- A. Comply with governing codes and regulations. Provide products of acceptable manufacturers which have been in satisfactory use in similar service for three years. Use experienced installers. Deliver, handle, and store materials in accordance with manufacturer's instructions.
- B. Coordinate location of systems to avoid interference with location of structure and other building systems. Notify Owner prior to construction of conflicts which cannot be resolved.

#### PART 2 PRODUCTS

##### 2.1 MATERIALS

- A. Plumbing Systems
  - 1. Application: Compressed-air systems.
  - 2. Components: Suitable for service.
    - a. Ingersoll Rand SS3L compressor or approved equal
    - b. Fixtures.
    - c. Piping.
    - d. 1- 50' retractable air and power line reel per bay.
    - e. In line air dryer and regulator
    - f. Meters and gauges.
    - g. General-duty valves.
    - h. Hangers and supports.
    - i. Identification devices.

#### PART 3 EXECUTION

##### 3.1 INSTALLATION

- A. Install materials and systems in accordance with manufacturer's instructions and approved submittals. Install materials in proper relation with adjacent construction and with uniform appearance for exposed work. Coordinate with work of other sections. Comply with applicable



Funny River Fire Station-Air drops  
Soldotna, AK

Kenai Peninsula Borough Maintenance  
Nov. 30, 21August 9, 2022

regulations and code requirements. Provide proper clearances for servicing.

- B. In the line leading to the air drops near the location of the compressor. We need an inline air dryer and a regulator.
- C. Clearly label and tag all valves and components.
- D. Test and balance all systems for proper operation.
- E. Restore damaged finishes. Clean and protect work from damage.
- F. Instruct Owner's personnel in proper operation of systems.

END OF SECTION COMPRESSOR

# Ingersoll-Rand SS3L3 Air Compressor, 1 Stage, Splash Lubrication, 3 hp, 10.3 cfm at 90 psi, 60 gal Tank

SS3L3 MFG # SS3L3

9.95 / EACH



Check other locations for availability. Order exceeds stock available at our Anchorage Distribution Center.

## Availability by Warehouse

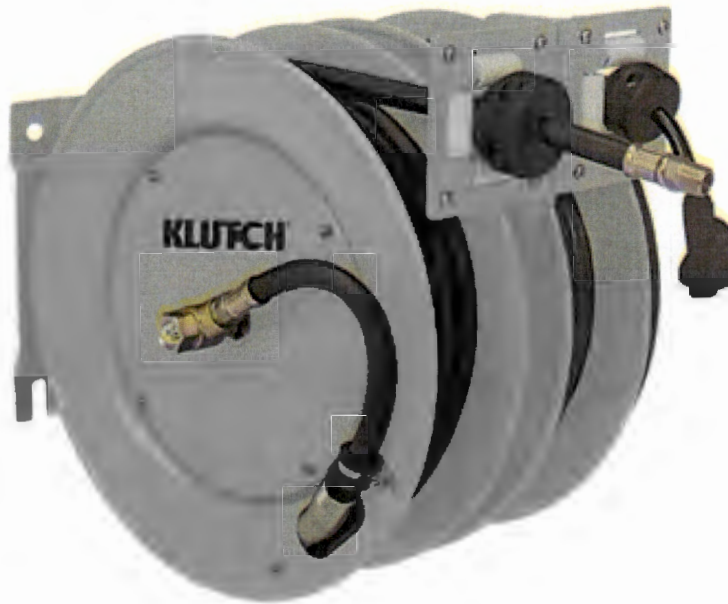
Ingersoll-Rand Air Compressor, 1 Stage, Splash Lubrication, 3 hp, 10.3 cfm at 90 psi, 240 VAC, 14.7 in. Overall Length, 23 in Overall Width, 66 in Overall Height, Cast Iron

## Features

- 3 hp single phase motor with thermal overload protection and manual reset, single phase motor
- When performance is defined by maximum operating pressure, increased air flow and extended duty cycles
- GAL VERT 3HP 240V single phase COMPRESSOR 11.3 CFM@90PSI
- Durable cast iron construction and precision-engineered quality components
- 100% continuous duty
- Manual drain system
- Maximum air power for commercial or contractor use
- More delivered air (cfm) gives you the power to do the job right and in less time
- High capacity compressor (upto 18.1 cfm at 90 psi) with 60 gal vertical tank



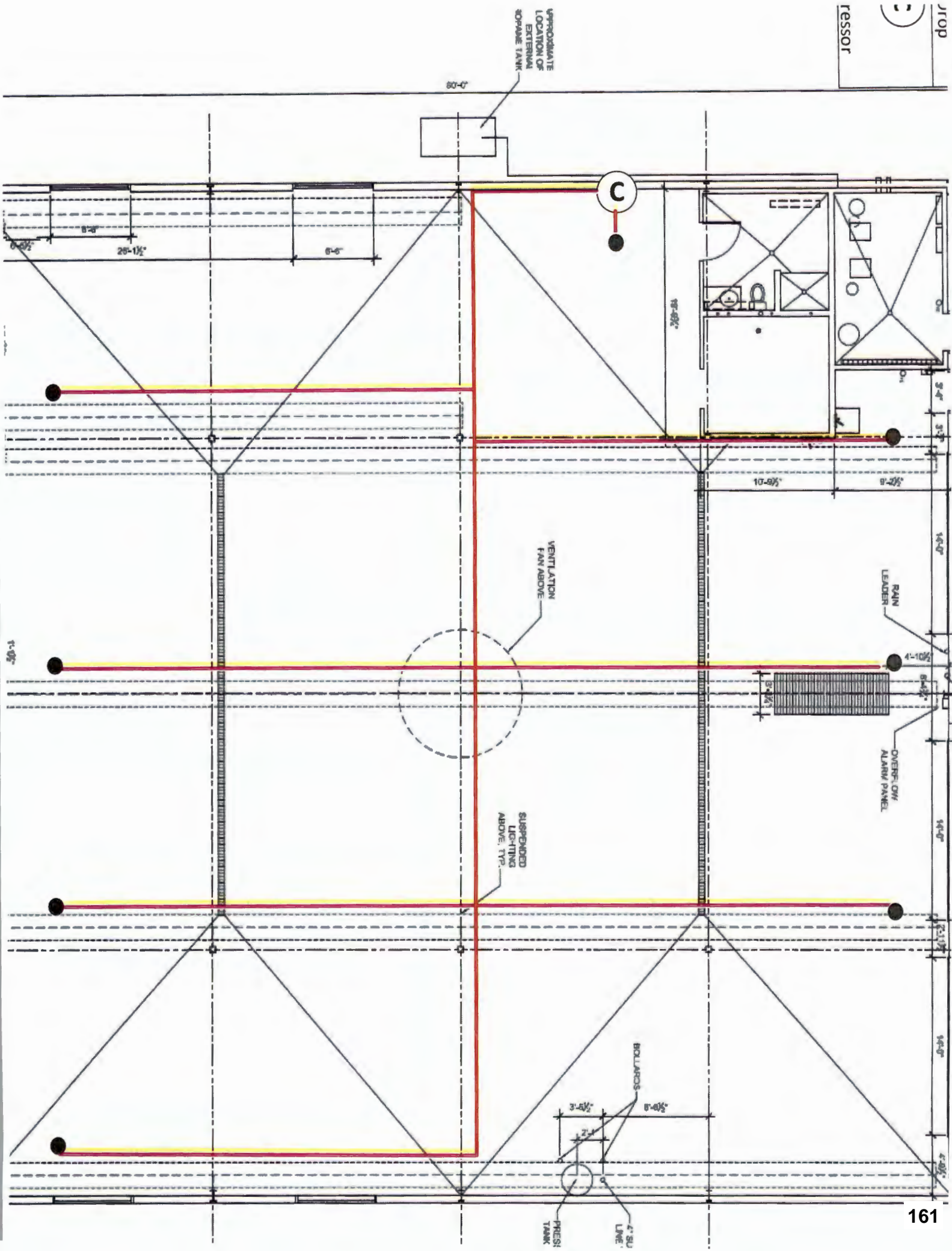
## 25ft. COMBO HOSE REEL/CORD REEL



Specification of Cord	3C / 125V
AWG	14
Amps (A)	13
Type	SJTOW
Outlet	S1
Length (ft)	33
Specification of Hose	3/8in. / 180 PSI
Material	NBR/SBR
Length (ft)	25

**Item#s 49592**





**BID FORM**  
**Funny River Fire Compressed Air**  
**Page 1 of 2**

**BIDDER ACKNOWLEDGEMENT**

1. To accept the provisions of the Instructions to Bidders.
2. To furnish all labor and materials and to accomplish the works and/or services in accordance with the Bid Documents.
3. The undersigned declares, under penalty of perjury under the laws of the United States, that neither he/she nor the firm, association or corporation of which he/she is a member, has, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this bid.

By signing below, the Bidder is hereby certifying to the following:

**ADDENDA ACKNOWLEDGEMENT**

In submitting this bid, I certify that I have examined the Bid and Specification documents, have received Addenda Nos.

☐ ☐ ☐ ☐ ☐, and have included their provisions in my bid.

**SIGNATURE REQUIREMENT**

Firm Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Representative \_\_\_\_\_ Title \_\_\_\_\_

Email Address \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_

The undersigned has read the foregoing and hereby agrees to the conditions stated therein by affixing his/her signature below:

\_\_\_\_\_  
**Signature of Authorized Company Representative**

\_\_\_\_\_  
**Date**

Bidder Checklist:

Bid Form: \_\_\_\_  
 Bid Schedule (if applicable) \_\_\_\_  
 Tax Compliance Form \_\_\_\_  
 Bid Bond (if applicable) \_\_\_\_

Enter Licensing Information:

Alaska Business License # \_\_\_\_  
 Contractor License (if applicable) # \_\_\_\_  
 Specialty Contractor License # (if applicable) \_\_\_\_



**BID FORM**  
**Funny River Fire Compressed Air**  
**Page 2 of 2**

**BID SCHEDULE**

Pay Item No.	Pay Item Description	Pay Unit/ UOM	Quantity	Unit Bid Price	Bid Amount
<b>BASE BID</b>					
1	Material, equipment and qualified personnel to provide and install compressed air lines	Ea.	1		
2	Spare hose reel with 50' or air and powerline for backup	Ea.	1		
<b>TOTAL EXTENDED BID</b>				<b>\$</b>	

\_\_\_\_\_  
Company Name

Contractor's/Consultant's Printed Name: _____ Contractor's/Consultant's Fed. Tax ID #: _____ On File Job/Service Provided: _____	PROPOSAL TO CONTRACT FOR SERVICES <b>KENAI PENINSULA BOROUGH</b> THIS PROPOSAL BECOMES A CONTRACT WHEN ACCEPTED AND SIGNED BY THE MAYOR OR HIS DESIGNATED OFFICIAL	PURCHASING & CONTRACTING DEPARTMENT 47140 E Poppy Lane Soldotna, Alaska 99669 (907) 714-2260
CONTRACTOR/CONSULTANT WILL PROVIDE THE KENAI PENINSULA BOROUGH THE FOLLOWING SERVICE(S)		
Sample		
ACCOUNT DISTRIBUTION: _____ DEPARTMENT/SERVICE AREA: <u>Maintenance</u>		
Contractor's/Consultant's compensation will be: _____ Not to exceed \$ _____		
Insurance, if required: Auto \$ <u>N/A</u> CGE <u>1,000,000</u> E & O \$ <u>N/A</u>		
Time schedule for performance will be _____		
The following attachments are incorporated here by reference _____		
BY SIGNING BELOW, THE CONTRACTOR/CONSULTANT HEREBY AFFIRMS THAT HE OR SHE HAS READ AND ACCEPTS ALL TERMS AND CONDITIONS OF THIS CONTRACT INCLUDING THE PROVISIONS CONTAINED ON THE REVERSE OF THIS FORM  CONTRACTOR/CONSULTANT SIGNATURE <u>X</u> _____ DATE _____		CONTRACTOR/CONSULTANT ADDRESS & PHONE NUMBER: _____
RECOMMENDED BY: _____	APPROVED AS TO FORM: _____	ACCEPTANCE BY KENAI PENINSULA BOROUGH: PURCHASE ORDER NO. _____
DEPARTMENT DIRECTOR OR DESIGNEE _____ DATE _____	PURCHASING & CONTRACTING _____ DATE _____	MAYOR OR DESIGNATED OFFICIAL _____ DATE _____



**Section 1. Execution of This Contract.** This contract is not valid until properly signed by the parties.

**Section 2. Independent Contractor/Consultant.** The Contractor/Consultant shall provide services as an independent contractor/consultant to the borough. Except as this contract provides otherwise, the borough shall not supervise or direct the Contractor/Consultant. The borough may administer this contract and monitor the Contractor's/Consultant's performance.

**Section 3. Compliance With Laws.** The Contractor/Consultant shall comply with all statutes, ordinances, and regulations governing its performance, post all required notices, and obtain all permits, licenses, and other entitlements necessary to its performance. The Contractor/Consultant shall pay all taxes related to its performance and shall be current on all borough taxes at the time of entering this contract. The Contractor/Consultant shall acquire and maintain in good standing all permits, licenses; and other entitlements necessary to the legal performance of this contract.

**Section 4. Equal Employment Opportunity.**

- A. The Contractor/Consultant will not discriminate against any applicant for employment because of race, color, religion, national origin, ancestry, age, sex, marital status, or mental or physical handicap. The Contractor/Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to the characteristics listed above. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting or recruiting advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor/Consultant will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The Contractor/Consultant shall state in all solicitations or advertisements for employees to work on contract jobs, that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex, marital status, or physical or mental handicap.
- C. The Contractor/Consultant shall include the provisions of subsections A and B of this section in every subcontract or purchase order under this contract, so as to be binding upon every subcontractor or vendor of the Contractor/Consultant under this contract.

**Section 5. Insurance.** During the term of this contract the Contractor/Consultant shall maintain a policy of workers' compensation and employee liability insurance as required by law. Contractor/Consultant shall also be required to carry additional insurance if so indicated on this form. Any such insurance shall be primary and exclusive of borough insurance. If liability insurance is required, the borough and school district, as applicable, shall be named as an additional insured on such policy with respect to the performance or failure to perform of this contract.

**Section 6. Assignments.** Unless the borough provides otherwise in writing, any assignment by the Contractor/Consultant of any part of this contract or any delegation of its duties shall be void, and permit the borough to terminate this contract without liability for work performed.

**Section 7. Ownership, Publication, Reproduction, and Use of Material.** Unless the borough provides otherwise in writing, all data, documents, and materials that the Contractor/Consultant produces shall be property of the borough, which shall retain the exclusive right to publish, disclose, distribute and otherwise use in whole or in part, any such data, documents, or other materials. This exclusive right does not apply to any materials presently in the public domain or not subject to copyright.

**Section 8. Indemnity.** Consultant shall indemnify, defend and hold the Borough, its elected and appointed officers, consultants, agents and employees who are directly responsible to the Borough (collectively "the Borough") harmless from and against any and all claims, demands, suits or liability of any nature, kind or character whatsoever under this Agreement, including costs, expenses and attorneys fees, resulting from negligent acts, errors, or omissions of the Consultant or Consultant's officers, agents, employees, partners, consultants, and sub-consultants who are directly responsible to the Consultant, (collectively "Consultant"). Consultant is not required to indemnify, defend, or hold harmless the Borough for a claim of, or liability for, independent negligent acts, errors, and omissions of the Borough. If there is a claim of, or liability for, a joint negligent act, error or omission of Consultant and the Borough, the indemnification, defense and hold harmless obligation of this Agreement shall be apportioned on a comparative fault basis. For purposes of this Agreement "independent negligent acts, errors, and omissions" means negligent acts other than the Borough's selection, administration, monitoring, or controlling of Consultant, or in approving or accepting Consultant's work.

**Section 9. Termination.**

This contract may be terminated:

- A. For cause immediately;
- B. By the borough for its convenience upon fifteen (15) days written notice to the Contractor/Consultant.

Upon termination and the Contractor's/Consultant's furnishing to the borough all finished and unfinished data, documents or other materials prepared under the contract, the borough shall pay the Contractor/Consultant for all satisfactory work performed before termination.

**Section 10. Nonwaiver.** Either party failing to enforce a provision of this contract does not waive the provision or affect the validity of the contract or a party's right to enforce any provision of the contract.

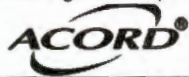
**Section 11. Jurisdiction and Choice of Law.** Any civil action arising from this contract shall be brought in the trial courts for the Third Judicial District of the State of Alaska at Kenai. The laws of the State of Alaska govern this contract.

**Section 12. Contract Interpretation.** In interpreting this contract the following documents are incorporated herein by reference and shall be given the following order of precedence:

- A. The General Conditions;
- B. Provisions on the other side of this form;
- C. The Contractor's/Consultant's written proposal as accepted by the borough;
- D. The borough's written request for proposals or invitation to bid.
- E. Any other document incorporated by reference.

**Section 13. Integration.** This document and all documents incorporated in it by reference are the entire agreement of the parties and supersede all previous communications, representations or agreements regarding this subject, whether oral or written, between the parties.





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

07/01/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Initech Technology 1010 W. Martin Luther King Jr Blvd  Austin TX 78701	<b>CONTACT NAME:</b> Bill Lumbergh <b>PHONE (A/C, No, Ext):</b> 800-201-1999 <b>FAX (A/C, No):</b> 800-831-1999 <b>E-MAIL ADDRESS:</b> blumbergh@initech.technology														
<b>INSURED</b> Prestige Worldwide 11788 W. Peco Blvd, Floor 3  Los Angeles CA 90064	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> <tr> <td>INSURER A : Wayne Enterprises</td> <td>061989</td> </tr> <tr> <td>INSURER B : Cyberdyne Systems</td> <td>102684</td> </tr> <tr> <td>INSURER C : Stark Industries</td> <td>050208</td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Wayne Enterprises	061989	INSURER B : Cyberdyne Systems	102684	INSURER C : Stark Industries	050208	INSURER D :		INSURER E :		INSURER F :	
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INSURER D :															
INSURER E :															
INSURER F :															

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	Y	GL751451811252411316125	07/01/2018	07/01/2019	EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					DAMAGE TO RENTED PREMISES (Ea occurrence) \$
						MED EXP (Any one person) \$
						PERSONAL & ADV INJURY \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:					GENERAL AGGREGATE \$ 2,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC					PRODUCTS - COMP/OP AGG \$ 1,000,000
	OTHER:					\$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY	Y	AL121201552411316125	07/01/2018	07/01/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO					BODILY INJURY (Per person) \$
	<input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY					BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS ONLY					PROPERTY DAMAGE (Per accident) \$ 1,000,000
						\$
	<input type="checkbox"/> UMBRELLA LIAB					EACH OCCURRENCE \$
	<input type="checkbox"/> EXCESS LIAB					AGGREGATE \$
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$					\$
C	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>	N/A	WC4151223352411316125	07/01/2018	07/01/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)					E.L. EACH ACCIDENT \$ <i>Varies</i>
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - EA EMPLOYEE \$ <i>Varies</i>
						E.L. DISEASE - POLICY LIMIT \$ <i>Varies</i>
D	Professional Liability or Errors or Omissions (If Applicable)		PL16181565191991514112	07/01/2018	07/01/2019	PER CLAIM \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

*Project Description - Kenai Peninsula Borough is listed as Additional Insured on General Liability & Auto Policies.*

- or -

*Project Description - The Certificate Holder is listed as Additional Insured on General Liability & Auto Policies.*

**CERTIFICATE HOLDER****CANCELLATION**

Kenai Peninsula Borough  
 148 N. Binkley Street  
 Soldotna, AK 99669

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



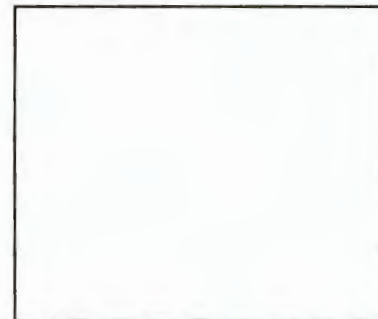
# Tax Compliance Certification

## Kenai Peninsula Borough

### Finance Department

144 N. Binkley Street  
Soldotna, Alaska 99669-7599  
www.kpb.us

Phone: (907) 714-2197  
or: (907) 714-2175  
Fax: (907) 714-2376



1.) Fill in all information requested. 2.) Sign and date. 3.) Submit with solicitation, or other.

For Official Use Only

Reason for Certificate:		For Department:	
<input type="checkbox"/> Solicitation <input type="checkbox"/> Other:		Dept. Contact:	
Business Name:			
Business Type:		<input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other:	
Owner Name(s):			
Business Mailing Address:			
Business Telephone:		Business Fax:	
Email:			

As a business or individual, have you ever conducted business or owned real or personal property within the Kenai Peninsula Borough? (If yes, please supply the following account numbers and sign below. If no, please sign below.)

☐ Yes    ☐ No    Kenai Peninsula Borough Code of Ordinances, Chapter 5.28.140, requires that businesses/individuals contracting to do business with the Kenai Peninsula Borough be in compliance with Borough tax provisions. No contract will be awarded to any individual or business who is found to be in violation of the Borough Code of Ordinances in the several areas of taxation.

REAL/PERSONAL/BUSINESS PROPERTY ACCOUNTS	
ACCT. NO.	ACCT. NAME

\_\_\_\_\_  
KPB Finance Department (signature required)

SALES TAX ACCOUNTS	
ACCT. NO.	ACCT. NAME

\_\_\_\_\_  
KPB Sales Tax Division (signature required)

TAX ACCOUNTS/STATUS (TO BE COMPLETED BY KPB)	
YEAR LAST PAID	BALANCE DUE

\_\_\_\_\_  
Date    ☐ In Compliance    ☐ Not In Compliance

TAX ACCOUNTS/STATUS (TO BE COMPLETED BY KPB)		
FILED THRU	M/F's	BALANCE DUE

\_\_\_\_\_  
Date    ☐ In Compliance    ☐ Not In Compliance

CERTIFICATION: I, \_\_\_\_\_ the \_\_\_\_\_, hereby certify that, to the  
(Name of Applicant) (Title)  
 best of my knowledge, the above information is correct as of \_\_\_\_\_.  
(Date)

\_\_\_\_\_  
Signature of Applicant (Required)

**IF ANY BUSINESS IS CONDUCTED OR IS AWARDED A BID WITHIN THE KENAI PENINSULA BOROUGH YOU MUST BE REGISTERED TO COLLECT SALES TAX. THE SALES TAX DEPARTMENT CAN BE REACHED AT (907) 714-2175.**



Alaska Business License # 902076

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

Division of Corporations, Business, and Professional Licensing

PO Box 110806, Juneau, AK 99811-0806

This is to certify that

**NORCOAST MECHANICAL, INC.**

6136 MACKAY STREET, ANCHORAGE, AK 99518

owned by

NORCOAST MECHANICAL, INC.

is licensed by the department to conduct business for the period

October 5, 2020 to December 31, 2022  
for the following line(s) of business:

23 - Construction



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

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

Julie Anderson  
Commissioner

Department of Commerce, Community, and Economic  
Development

# CORPORATIONS, BUSINESS & PROFESSIONAL LICENSING

[SOA](#) / [DCCED](#) / [CBPL](#) / [Search](#) / [PL](#) / [Details](#)

## LICENSE DETAILS

**License #:**

CONE32707

**Program:**

Construction Contractors

**Type:**

General Contractor Without Residential Contractor Endorsement

**Status:**

Active

**DBA:**

NORCOAST MECHANICAL, INC.

**Issue Date:**

12/31/2006

**Effective Date:**

12/16/2020

**Expiration Date:**

12/31/2022

**Mailing Address:**

ANCHORAGE, AK, UNITED STATES

## Owners

Owner Name:	NORCOAST MECHANICAL, INC.
Entity Number:	39250D

## Relationships

Title:	Mechanical Administrator Asignee
License/Entity #:	MECM13
Name:	DAVID BATHKE
License Status:	Active
Expiration Date:	12/31/2023

## Designations

No Designations Found

## Agreements & Actions

No Agreements Or Actions

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ECONOMIC DEVELOPMENT ·



**KENAI PENINSULA BOROUGH  
PURCHASING & CONTRACTING DEPARTMENT**

**CHANGE ORDER NO. 1**

**Initiation Date: October 24, 2022**

**Project:** Hope Site Environmental Clean up

**Contractor:** US Ecology Alaska, LLC  
PO Box 1530  
Kenai, AK 99611

**Contract Date:** October 20, 2022

**Purchase Order No.** 23-0878

**Contractor is hereby directed to make the following changes in the contract:**

1. Remove and dispose of additional fluids on ADNR land adjacent to KPB managed property

**Total Net Cost of Services ..... \$28,145.88**

**REASON FOR CHANGE:**

1. During initial site visit it was discovered that potential contaminants were found in containers on an adjacent parcel of DNR land. KPB and ADNR agreed to work under a single contract with the KPB taking the lead with the contractor. A new quote was provided from the contractor through ADNR for the additional clean up.

The original Contract Sum was .....	\$30,000.00
Net Change by previously authorized Change Orders .....	\$ 0.00
The Contract Sum Prior to this Change Order was .....	\$30,000.00
The Contract Sum will be <u>increased</u> by this Change Order .....	\$28,145.88
The New Contract Sum including this Change Order will be .....	\$58,145.88
The Contract Time will not be changed by this Change Order .....	

**Accepted:**

CONTRACTOR

(must be signed within 3 business days)

By: Lori Wagoner

Date: 10/28/2022

**Recommended:**

Robert Ruffner, Planning Director

By: Robert Ruffner

Date: 10/28/2022

**Approved:**

FINANCE DEPARTMENT (only if additional  
funds are required)

By: Brandi Harbaugh

Date: 10/28/2022

PURCHASING & CONTRACTING DIRECTOR

By: John Hedges

Date: 10/28/2022

KENAI PENINSULA BOROUGH MAYOR

By: Mike Navarre

Date: 10/30/2022

FINANCE DEPARTMENT  
FUNDS VERIFIED

Acct. No. 250.21210.43011

Amount \$28,145.88

By: CG

Date: 10/28/2022

NA

# Kenai Peninsula Borough

## Maintenance

### MEMORANDUM

**TO:** Mike Navarre, Mayor

**Thru:** John Hedges, Purchasing & Contracting Director *JH*

**FROM:** Tom Nelson, Maintenance Director *TN*

**DATE:** October 26, 2022

**RE:** Nikiski High School Lockers, Co-op Purchase Authorization

Under Section 5.28.030e of the Borough code, it is requested that Nikiski High School corridor locker purchase quoted to KCDA purchasing cooperative pricing be approved. The price quoted from the KCDA bid approved vendor is for \$185,595.00 for 591 lockers, with freight quoted at \$32,200.00, for a total of \$217,795. The replacement of lockers at the Nikiski High School was selected from many potential locker projects due to the deterioration of existing lockers.

The KCDA (King County Director's Association) purchasing cooperative bid process includes newspaper advertising and posting bids on their website; allowing bidders a month to respond to bids; 2 months are provided for evaluating bids and request and receive clarifications; bid awards are recommended by assigned purchasing agents, reviewed by the Purchasing Manager and approved by the KCDA Board of Directors for final approval.

Your approval of this request will allow the timely purchase of needed lockers, and significantly reduce time and effort in obtaining competitive pricing by taking advantage of the competitive bidding process utilized by KCDA.

This office is available for any questions regarding this request.

Approved: Mike Navarre Date: 10/27/2022  
Mike Navarre, Mayor

NA

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	<u>400.74050.21855.48630 - \$53,163.94</u>
	<u>400.74050.23855.48630 - \$164,631.06</u>
Amount	<u>\$217,795.00</u>
By: <i>cg</i> <i>BH</i>	Date: <u>10/27/2022</u>



# Kenai Peninsula Borough

## Purchasing and Contracting Department

### MEMORANDUM

**TO:** Mike Navarre, Mayor

**THRU:** John Hedges, Purchasing & Contracting Director *JH*

**FROM:** Bob Ciciarella, Chief - Kachemak Emergency Services *RNC*

**DATE:** October 24, 2022

**RE:** **Purchase of a Type 1 Ambulance for Kachemak Emergency Service Area:**  
Under the Houston Galveston Area Council (H-GAC) Cooperative Purchasing

### DESCRIPTION -

Kachemak Emergency Service Area (KESA) is in need to replace an aging 2007 Type 1A Ambulance. KESA currently has a 2013 Braun Northwest Medic Unit at our Station 1 in addition to Braun NW, Inc. units at other Borough Fire Service Areas. . KESA has received a proposal from Braun NW, Inc. that includes group purchasing organization (GPO) involvement, specifically H-GAC. In the interest of Standardization and efficiencies for our responding Medics, KESA has chosen to continue with this manufacturer. The Braun NW proposal matches our existing ambulance configuration which offers transparency by standardizing medical equipment and supply storage creating efficiencies for responding KESA Medics.

Utilizing the established H-GAC pricing structure, Braun Northwest has provided a quotation for the sum of \$265,241.00, to provide a Type 1A Medic Unit. For reasons stated above, Purchasing & Contracting would like to award Braun NW, Inc. with the contract to build and deliver a Type 1A Medic Unit for Kachemak Emergency Service Area. The main qualifiers restated: Increased system control and performance, local rolling stock alignment, parts, repair and maintenance savings as well as the satisfaction of procurement code through H-GAC involvement.

Your approval is respectfully requested. Funding for this project is in account number 446-51810-23481-48514.

*Mike Navarre*

Mike Navarre, Mayor

10/25/2022

Date

NA

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct:	446.51810.23481.48514
Amount:	\$265,241.00
By: <i>Cg BH</i>	Date: 10/24/2022

DocuSign Envelope ID: C69C00D9-4000-404E-B000-7770202022

# Kenai Peninsula Borough

## Maintenance Department

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### MEMORANDUM

**TO:** Mike Navarre, Borough Mayor

**THRU:** John D. Hedges, Purchasing & Contracting Department *JH*

**THRU:** Thomas Nelson, Maintenance Director *TN*

**FROM:** Carla Salzer, Maintenance Foreman *CS*

**DATE:** October 18, 2022

**RE:** Northern Support Services "Carehawk" Sole Source Waiver

---

Under Section 5.28.280a of the Borough code, it is requested that, through sole source approval, the Kenai Peninsula Borough Maintenance Department (KPBM) purchase a collection of various Carehawk intercom parts from Northern Support Services (NSS). These parts are intended for installation at Nikiski High School. The intercom/bell system is nearing complete loss of function and is in dire need of replacement. Through inquiry of the manufacturer (Carehawk Safety Communications USA), it has been determined that Northern Support Services is the sole authorized product line distributor for the State of Alaska. Carehawk has purchased Dukane, a product line common throughout the district. Their gear is designed to seamlessly integrate with the hardware already in place and will save an immense amount of tech installation time.

Your approval of this request will allow the purchase of Carehawk intercom equipment from Northern Support Services (NSS) for the cost of \$23,375.00 and provide the KPBSD with an immediate solution to their intercom needs.

This office is available for any questions regarding this request.

Your approval is hereby requested. Funding for this project is \$23,375.00 and in account number 400.78050.21856

Approved: Mike Navarre  
Mike Navarre, Mayor

10/20/2022  
Date

Account string:  
400-78050-21856-48311

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	<u>400.78050.21856</u>
Amount:	<u>\$23,375.00</u>
By: <i>CS</i>	Date: <u>10/19/2022</u>

# Kenai Peninsula Borough

## Purchasing and Contracting Department

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### MEMORANDUM

**TO:** Mike Navarre, Borough Mayor

**THRU:** John Hedges, Purchasing & Contracting Director *JH*

**FROM:** Ben Hanson, IT Director *BH*

**DATE:** October 13, 2022

**RE:** KPB Cyber Security Operations Center Contract, Under NASPO  
Contract #NVP-2018-CLOUD-0002

---

In FY23, KPB IT Budgeted a new full-time position to improve KPB cyber security posture. Between December of 2021 and July of 2022, KPB IT learned of market offerings which would provide 24/7 cyber security monitoring as well as other cyber related professional services, with significant savings as compared to the budgeted position.

The market for these services is still maturing, with little standardization between different vendors. KPB IT recommends contracting with Arctic Wolf for their Managed Detection and Response (MDR) and Managed Risk services. KPB IT has surveyed the market, and Arctic Wolf's offering is a good fit for KPB's current and near term needs. Contracting for 24/7 coverage will save KPB approximately \$35,000/year as compared to a full-time cyber security position.

Central Peninsula Hospital (CPH) is currently using Arctic Wolf for this same service and has been satisfied with the MDR functionality. MDR is the core security service that would provide 24/7 monitoring for the KPB network, along with the ability to lock down KPB's network in the event of a breach or other cyber event.

In addition to this "nuts and bolts" MDR service, Arctic Wolf offers a "Managed Risk" service which addresses some of the broader professional services related to cyber security. This includes elements of security assessment, and the availability of certified cyber security experts (CISSP) who can consult with KPB on policy and practice decisions.

This contract will improve many elements of KPB cyber security posture identified in our 2021 assessment. We also recognize that KPB should consider the cyber security posture of those organizations that we fund but are operated through operating agreements. Establishing a common cyber security vendor could lay the groundwork for a wholistic cyber security framework for KPB Departments, Service Areas and Partner Agencies.

The Arctic Wolf solution will be quoted under NASPO Contract# NVP-2018-CLOUD-0002.

Your approval to enter into this purchase agreement is hereby requested. Funding for this project is in account number 100.11231.00000.43011.

Mike Navarre  
Mike Navarre, Borough Mayor

10/17/2022  
Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct: <u>100.11231.00000.43011</u>	
Amount: <u>\$110,256.81</u>	
By: <u>CY BH</u>	Date: <u>10/14/2022</u>
NOTES: NA	



Quote # 202202-85927\_R1\_Kenai Peninsula Borough\_Arctic Wolf MDR + MR.

Quote Expires 30 Days From:  
8/25/2022

Company Name: Kenai Peninsula Borough

Contact: Ben Hanson

Email: [benhanson@kpb.us](mailto:benhanson@kpb.us)

Phone: (907) 714-2112

Account Executive: Leaves Garnett

4141 'B' Street, Suite 307 - Anchorage, AK 99503 - 907.222.6140

Toll Free 800.881.0962 - Order Fax 888.729.0997



Line Item	Part Number	Description	Qty.	Unit Sale Price	Ext. Sale Price
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**Arctic Wolf MDR + MR Solution for Kenai Peninsula Borough****\*Priced According to Contract Number: NVP-2018-CLOUD-0002****NASPO Master Contract Number: AR2472****\*Annual Commitment Billed Upfront****Subscription Term: 10/31/2022 - 10/30/2023****Recurring Costs:**

1		Arctic Wolf (Qty 405) Managed Detection Response User, (Qty 135) Server, (Qty 540) Log Retention, (Qty 2) 200-Series Sensor, (Qty 15) G-Suite User, (Qty 540) Platform Access, (Qty 1) Platform Base, (Qty 405) Managed Risk User & (Qty 135) Managed Risk Server			\$103,080.26
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**One-Time Costs:**

2		Arctic Wolf Onboarding for MDR/MR & Sensor Shipping			\$7,176.55
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**GRAND TOTAL:****\$110,256.81**



Line Item	Part Number	Description	Qty.	Unit Sale Price	Ext. Sale Price
<b>Solution Line Item Detail:</b>					
<b>Recurring:</b>					
<b><u>Arctic Wolf (Qty 405) Managed Detection Response User, (Qty 135) Server, (Qty 540) Log Retention, (Qty 2) 200-Series Sensor, (Qty 15) G-Suite User, (Qty 540) Platform Access, (Qty 1) Platform Base, (Qty 405) Managed Risk User &amp; (Qty 135) Managed Risk Server</u></b>					
<b>Subscription Term: 10/31/2022 - 10/30/2023</b>					
3	AW-MDR-USER	Arctic Wolf MDR user license 125-3000 Arctic Wolf Networks, Inc. - AW-MDR-USER	405	\$109.87	\$44,497.35
4	AW-MDR-SE	Arctic Wolf MDR server license Arctic Wolf Networks, Inc. - AW-MDR-SE	135	\$109.82	\$14,825.70
5	AW-MDR-1YR	Arctic Wolf MDR Log Retention - 1 year Arctic Wolf Networks, Inc. - AW-MDR-1YR	540	\$7.90	\$4,266.00
6	AW-MDR-2XX-S	Arctic Wolf 200 Series Sensor Arctic Wolf Networks, Inc. - AW-MDR-2XX-S	2	\$1,647.30	\$3,294.60
7	AW-MDR-GSU	Arctic Wolf MDR G-Suite user license Arctic Wolf Networks, Inc. - AW-MDR-GSU	15	\$12.37	\$185.55
8	AW-PLATFORM	Arctic Wolf Platform Access Arctic Wolf Networks, Inc. - AW-PLATFORM	540	\$8.23	\$4,444.20
9	AW-PLATFORM-BASE	Arctic Wolf Base Platform Arctic Wolf Networks, Inc. - AW-PLATFORMBASE	1	\$1,915.46	\$1,915.46
10	AW-MR-USER	Arctic Wolf Managed Risk user license 125-3000 Arctic Wolf Networks, Inc. - AW-MR-USER	405	\$54.91	\$22,238.55
11	AW-MR-SE	Arctic Wolf Managed Risk server license Arctic Wolf Networks, Inc. - AW-MR-SE	135	\$54.91	\$7,412.85
<b><u>SUBTOTAL</u></b>					<b><u>\$103,080.26</u></b>

Line Item	Part Number	Description	Qty.	Unit Sale Price	Ext. Sale Price
<b><i>One-Time:</i></b>					
<b><u>Arctic Wolf Onboarding for MDR/MR &amp; Sensor Shipping</u></b>					
12	AW-MDR-OB	Arctic Wolf MDR Onboarding Arctic Wolf Networks, Inc. - AW-MDR-OB	1	\$5,028.84	\$5,028.84
13	AW-SHP	Arctic Wolf Sensor/Scanner Shipping Arctic Wolf Networks, Inc. - AW-SHP	2	\$117.60	\$235.20
14	AW-MR-OB	Arctic Wolf Managed Risk Onboarding Arctic Wolf Networks, Inc. - AW-MR-OB	1	\$1,912.51	\$1,912.51
<b><u>SUBTOTAL</u></b>					<b><u>\$7,176.55</u></b>
 <u>Prepared by: Michael Fowler</u>					
Please contact the person listed above at Structured for any questions regarding this quotation.					

Line Item	Part Number	Description	Qty.	Unit Sale Price	Ext. Sale Price
<p><b>Notes:</b></p> <p>1. Client acknowledges and agrees that the by signing this quotation, issuing a purchase order referencing this quotation, or otherwise accessing or utilizing the solution outlined in this quotation that the Structured Communication Systems, Inc. Standard Terms and Conditions, which can be found at <a href="http://www.structured.com/terms/">http://www.structured.com/terms/</a>, apply to this and all quotations.</p> <p>Further, the Client acknowledges and agrees that the use, title, interest, rights and warranties associated with the solution outlined in this quotation are governed by the applicable manufacturer end-user license agreement, software license agreement, subscription agreement, warranty terms and/or maintenance/support contract.</p> <p>2. Prices do not include shipping charges. All shipping charges are FOB origin and will be added at time of invoice. Prices do not include Sales Tax. Sales tax rates are an estimate and are subject to change. Rates are dictated by the state into which the solution is being shipped. Freight may be taxable, depending upon state regulations.</p> <p>Please note that pricing outlined in this quotation does not include tariffs or any other international or national tax or duty (if any) that may be levied against some or all of the products by the applicable manufacturer at the time of procurement by Structured for the benefit of the Client. As such, any such tariffs, taxes or duties are the sole responsibility of the Client and will be passed through by Structured to the Client at the time of invoicing.</p> <p>3. Full payment is due upon receipt of the invoice for subscription services. Structured will accept pre-payment or Visa/MasterCard without approved credit; please note that all credit card transaction will also incur a three percent (3%) transaction fee. All quotes and proposals are calculated using US Dollars.</p> <p>4. Structured reserves the right to adjust prices at any time according to manufacturer price changes or material changes in circumstances that effect the scope of services proposed herein. In the event that the expiration date has been exceeded, please contact your Account Representative for an updated quote.</p> <p>5. <b>Remit To Address:</b> 12901 SE 97th Ave Suite 400, Clackamas OR, 97015</p> <p><b>Subscription Services:</b></p> <p>1. Kenai Peninsula Borough acknowledges and agrees that it is entering into a one-year commitment with Arctic Wolf that cannot be cancelled.</p> <p><b>2. This service will automatically renew annually unless Written Cancellation is given 70 days prior to end of the term.</b></p> <p>3. Client may increase or decrease quantities of Subscriptions by written notice to Structured or via the online portal. Billing adjustments will not go into effect until the next billing cycle. Adjustments to services via the portal at any point during the contract will result in either increased or decreased costs on the invoices.</p> <p>4. Renewal of this subscription with a service term and quantities equal to or greater than the services reflected on this quote could be subject to a maximum of 8% annual increase.</p> <p><i>This quotation contains information that is privileged and confidential. The information contained in this quotation is intended only for use of the person to whom it is addressed. If the reader of this quotation is not (1) the intended recipient or (2) the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited</i></p>					
<p><b>WHEN PLACING YOUR ORDER, PLEASE FAX OR EMAIL TO: 888-729-0997 or <a href="mailto:fax@structured.com">fax@structured.com</a></b></p>					
<p><b>Please fill out all of the below information to ensure that your order is processed as efficiently as possible.</b></p> <p>Signature: _____ Date: _____</p> <p>Shipping Address:</p> <p>Street: _____</p> <p>City, ST Zip: _____</p> <p>Contact: _____</p> <p>Phone: _____</p> <p>Email: _____</p> <p>Preferred Shipping Method: Ground _____ 2nd Day _____ Overnight _____</p> <p>Date Needed: _____</p> <p>Customer Reference / Purchase Order Number: _____</p> <p><b>Bridging People, Business &amp; Technology</b></p> <p>Ask us about our high-quality Internet Security, Connectivity, Storage and Access Offerings...</p>					



# Kenai Peninsula Borough

## Solid Waste Department

### MEMORANDUM

**TO:** Mike Navarre, Borough Mayor

**THRU:** John D. Hedges, Purchasing & Contracting Department *John Hedges*

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

**DATE:** October 13, 2022

**RE:** Totem Equipment & Supply SANY215 Sole Source Waiver

The Kenai Peninsula Borough Solid Waste Department requires a sole source to have Totem Equipment & Supply make repairs to the SANY 215 excavator. A hydraulic pump needs replaced on the equipment and we will also have an inspection completed for the condition of the undercarriage. Totem Equipment & Supply is the only SANY dealer in Alaska. They provide the extended warranty on our excavator and will be the service provider to cover the warranty on the pump replacement. The excavator is an integral part of the landfill equipment fleet.

We request approval for this request. Funding for this request is available in account 290.32122.43750.

Approved: *Mike Navarre*  
Mike Navarre, Mayor

10/14/2022

Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.: <u>290.32122.00000.43750</u>	
Amount: <u>\$15,280.19</u>	
By: <u><i>CS BH</i></u>	Date: <u>10/13/2022</u>
NOTES: NA	

# Kenai Peninsula Borough

## Purchasing & Contracting

### MEMORANDUM

**TO:** Mike Navarre, Mayor

**THRU:** John Hedges, Purchasing & Contracting Director *JH*

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

**DATE:** November 1, 2022

**RE:** Authorization to Award a Contract for ITB23-013 Kenai, Nikiski, Sterling Transfer Facilities Operation & Maintenance 2023.

The Purchasing and Contracting Office formally solicited and received bids for the ITB23-013 Kenai, Nikiski, Sterling Transfer Facilities Operation s & Maintenance 2023. Bid packets were released on August 25, 2022 and the Invitation to Bid was advertised in the Peninsula Clarion and Anchorage Daily News on August 25, 2022.

The project consists of Operations and Maintenance of the Kenai, Nikiski and Sterling Transfer Facilities and transfer of waste to the Central Peninsula Landfill (CPL) in Soldotna.

On the due date of September 21, 2022, one (1) bid was received and reviewed to ensure that all the specifications and delivery schedules were met. The low bid of \$1,188,299.25 was submitted by Alaska Waste – Kenai Peninsula LLC., Soldotna, Alaska

Your approval for this bid award is hereby requested. Funding for this project is in account number 290.32570.00000.43011.

*Mike Navarre*

Mike Navarre, Mayor

11/3/2022

Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	290.32570.00000.43011
Amount	\$417,200.00
By: <i>cg</i> <i>BH</i>	Date: 11/3/2022

NOTES This amount is for the remaining FY23. The balance will be paid in FY24.



**KENAI PENINSULA BOROUGH  
PURCHASING & CONTRACTING****BID TAB FOR: ITB23-013 Nikiski, Kenai, Sterling Transfer Facility Operations & Maintenance**

CONTRACTOR	LOCATION	BASE BID
Alaska Waste - Kenai Peninsula LLC	Soldotna, Alaska	\$1,188,299.25

**DUE DATE: September 21, 2022****KPB OFFICIAL:**  
John Hedges, Purchasing & Contracting Director

# Kenai Peninsula Borough

## Purchasing & Contracting

### MEMORANDUM

**TO:** Mike Navarre, Mayor

**THRU:** John Hedges, Purchasing & Contracting Director *JH*

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

**DATE:** November 1, 2022

**RE:** Authorization to Award a Contract for ITB23-012 Seward Transfer Facilities Operation & Maintenance 2023.

The Purchasing and Contracting Office formally solicited and received bids for the ITB23-012 Seward Transfer Facilities Operation s & Maintenance 2023. Bid packets were released on August 25, 2022 and the Invitation to Bid was advertised in the Peninsula Clarion and Anchorage Daily News on August 25, 2022.

The project consists of Operations and Maintenance of the Seward Transfer Facilities and transfer of waste to the Central Peninsula Landfill (CPL) in Soldotna.

On the due date of September 21, 2022, one (1) bid was received and reviewed to ensure that all the specifications and delivery schedules were met. The low bid of \$1,030,233.60 was submitted by Alaska Waste – Kenai Peninsula LLC., Soldotna, Alaska

Your approval for this bid award is hereby requested. Funding for this project is in account number 290.32150.00000.43011.

*Mike Navarre*

Mike Navarre, Mayor

11/3/2022


Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	290.32150.00000.43011
Amount	\$236,700.00
By: <i>cg</i> <i>BH</i>	Date: 11/3/2022

NOTES This amount is for the remaining FY23. The balance will be paid in FY24.

**KENAI PENINSULA BOROUGH  
PURCHASING & CONTRACTING****BID TAB FOR: ITB23-012 Seward Transfer Facility Operations & Maintenance**

CONTRACTOR	LOCATION	BASE BID
Alaska Waste - Kenai Peninsula LLC	Soldotna, Alaska	\$1,030,233.60

**DUE DATE: September 21, 2022****KPB OFFICIAL:**  
**John Hedges, Purchasing & Contracting Director**

Kenai Peninsula Borough  
Purchasing & Contracting

MEMORANDUM

**TO:** Mike Navarre, Mayor

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

**THRU:** John Hedges, Purchasing & Contracting Director *JH*

**THRU:** Dil Uhlin, Road Service Area Director *DU*

**FROM:** Andrew Walsh, Project Manager *AW*

**DATE:** October 24, 2022

**RE:** Transfer Additional Road Funds to Sport Lake, Hakala, Cotman Dr.

The Purchasing and Contracting Office is requesting to move capital funds from CIP 22 Duke Street and CIP 22 St. Andrews to the CIP 22 Sport Lake, Hakala, and Cotman Dr. project. On August 23, 2022, three bids were received for ITB23-011. Foster Construction was the apparent low bid at \$514,915. Due to the increase in the project scope that was discovered during the design process and escalation costs, the budgeted amount exceeded the original estimated cost of the project. Due to the high priority of the Sport Lake project, Purchasing and Contracting, in cooperation with the Roads Department is requesting to transfer the amount below from other lower priority projects within the FY22 Road Service Area budget. The Duke Street and St. Andrews projects will be reprioritized through the Roads Department and the Road Service Area Board.

Sport Lake CIP 22 Budget	\$ 288,335.90
Additional funding needed	\$ 356,545.00
Revised Project Budget for Sport Lake Rd.	\$ 644,880.90

Funds to be transferred from the following accounts:

\$227,279.00 from account 434-33950-N3DUK-49999  
\$129,266.00 from account 434-33950-W7AND-49999

Funds to be transferred to account 434-33950-C5SPO-49999.

*Mike Navarre*  
\_\_\_\_\_  
Mike Navarre, Borough Mayor

11/7/2022  
\_\_\_\_\_  
Date

NA

FINANCE DEPARTMENT	
FUNDS VERIFIED	
Acct. No.	<u>434-33950-N3DUK-49999</u>
Amount	<u>\$227,279.00</u>
Acct. No.	<u>434-33950-W7AND-49999</u>
Am	<u>9,266.00</u>
By: <i>Cg</i> <i>BL</i>	Date: <u>10/26/2022</u>

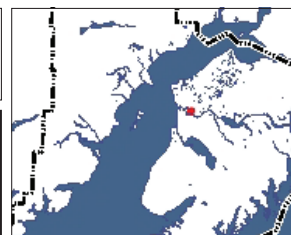




Geographic Information Systems

144 North Binkley Street, Soldotna, Alaska 99669

## Sports Lake/ Hakala Dr./ Cotman Ct.



### Legend

- Mileposts
- City Limits
- Highways
- Major Roads
- Roads
  - Town Medium Volume
  - Town Low/Seasonal; Other
  - ... Proposed
- Parcels
- Image
  - Red: Band\_1
  - Green: Band\_2
  - Blue: Band\_3



### Notes

Total Road length ~ 3,315 LF. Road width 18'-22'. Project Details: Roads need to be re-ditched, raised, culverts installed and capped with turnaround at Cotman Ct.

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. Do not use for navigation.

DATE PRINTED: 9/15/2021

**MEMORANDUM**

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

**THRU:** Mike Navarre, Mayor *MN*  
Robert Ruffner, Planning Director *RR* for RR

**FROM:** Brenda Ahlberg, Emergency Manager *BA*

**DATE:** November 3, 2022

**RE:** Kachemak City All Hazards Mitigation Plan 2022 Update

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This memo recognizes an administrative change to the Kenai Peninsula Borough Hazard Mitigation Plan 2019 Update. The Kachemak City All Hazards Mitigation Plan 2020 Update has been updated as the new Annex B. Under KPB 2.80.010, "The mayor is authorized to make administrative changes to these plans provided the assembly shall be advised of all such changes."

The Borough plan and updated annexes by city are available online at <https://www.kpb.us/emergency-mgmt/plans/plans>. Hardcopies may be viewed in the planning department or available for print through public records request.

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:	Postponed to 12/13/22
Vote:	9 Yes, 0 No, 0 Absent
Date:	12/13/22
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;
- 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.

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.

#### **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 sites through setbacks, buffer zones, and street-level visual screening. 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;
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.

#### **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 A.S. 43.65;
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



- 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 unreclaimed 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>	<b>A.</b> Applies to all private and public lands, except as preempted by other law;  <b>B.</b> Does not apply within the incorporated cities;  <b>C.</b> Prohibits extraction within 300 feet of riparian wetlands and naturally-occurring open water bodies;	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.  1 to 10 acres eligible for counter permit if no processing or water table extraction.  Three different CLUP categories: earth materials extraction (more than ten acres), earth materials processing, and earth materials extraction within water table.  Applicant may apply for one, two, or all CLUP types.	<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			Allow for up to 500 cubic yards of processing material between hours of 8AM to 6PM.
	<b>Earth Materials Processing CLUP</b> -Required for all on- site processing, screening, or crushing -21.29.050 and 21.29.055 conditions apply			<b>Earth Materials Processing CLUP</b> Add blasting as a type of processing. Clarify processing does not mean striping and
	<b>Earth Materials Extraction within Water Table CLUP</b> -Required for all earth materials extraction within water table -21.29.050 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>	Explicitly add ADNR for temporary water withdrawals
<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> -Street-level noise and visual screening (as</p>	Berm height needs to be more flexible if screening requirements are to consider more 8' above elevation at property boundaries.

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:            -Additional setbacks or rolling berms            -Maintenance and repair of damaged public roads            -Driveway authorization            -Dust suppression on public ROWs            -Surface water protections as set forth in 21.29.030(A)(8)(a)            -Street-level screening as appropriate for surrounding area and</p>	

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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Re: Tupper Amendment #2 to O2022-36

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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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Re: Tupper Amendment #3 to O2022-36

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

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

**DATE:** November 15, 2022

**SUBJECT:** **Tupper Amendment #4 Replacement** 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) and (2), 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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Re: Tupper Amendment #4 to O2022-36 Replacement

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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.

## 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;

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Re: Tupper Amendment #4 to O2022-36 Replacement

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- 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.
- e. All permits shall be issued with a condition which prohibits any material extraction inside the boundaries of a mapped tsunami hazard zone within 500 linear feet of any existing private well or water source.**

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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 Re: Tupper Amendment #5 to O2022-36

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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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Re: Tupper Amendment #5 to O2022-36

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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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Re: Administrative Amendment #1

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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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Re: Administrative Amendment #3

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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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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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- 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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- 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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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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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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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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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:</p> <p>-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:  -Reclamation requirements;  -Hours of operation; &amp;  -Buffer area.</p> <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.

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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](#)

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**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

---

**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

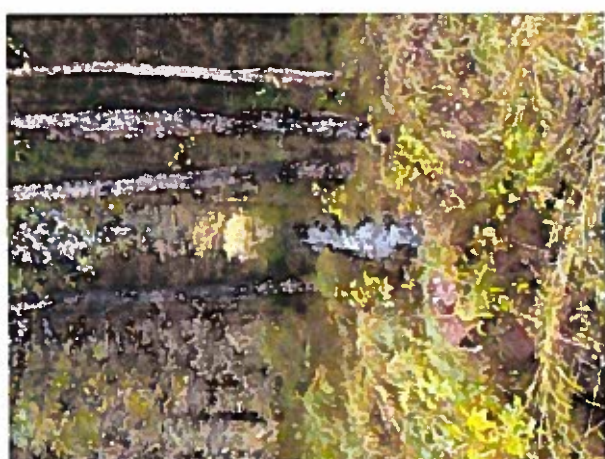
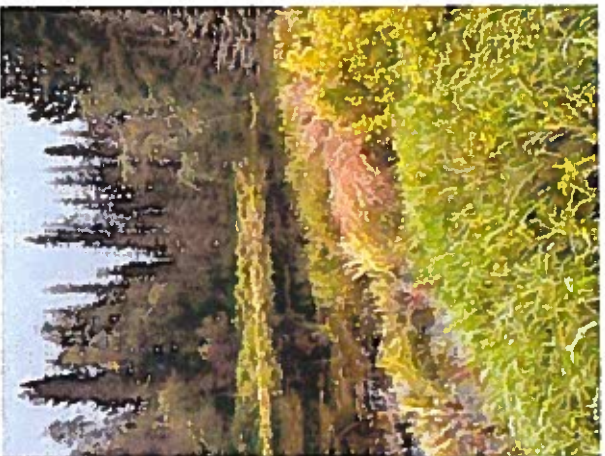
CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

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

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). 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....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

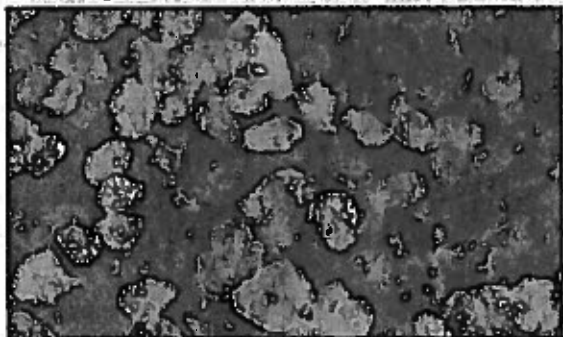
### Sand's Tiny Secrets — Size, Material, & Shape

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.

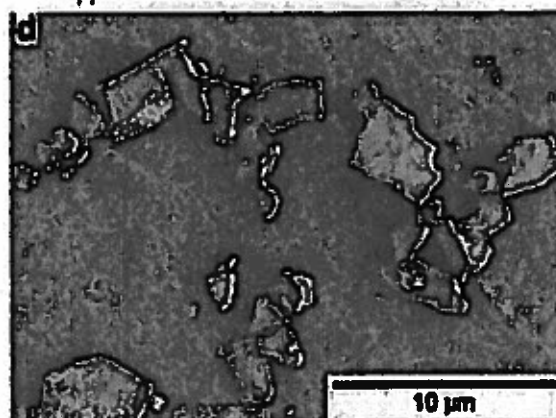
Most sand with which we are familiar is heavily weathered. It has the familiar shape of

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.

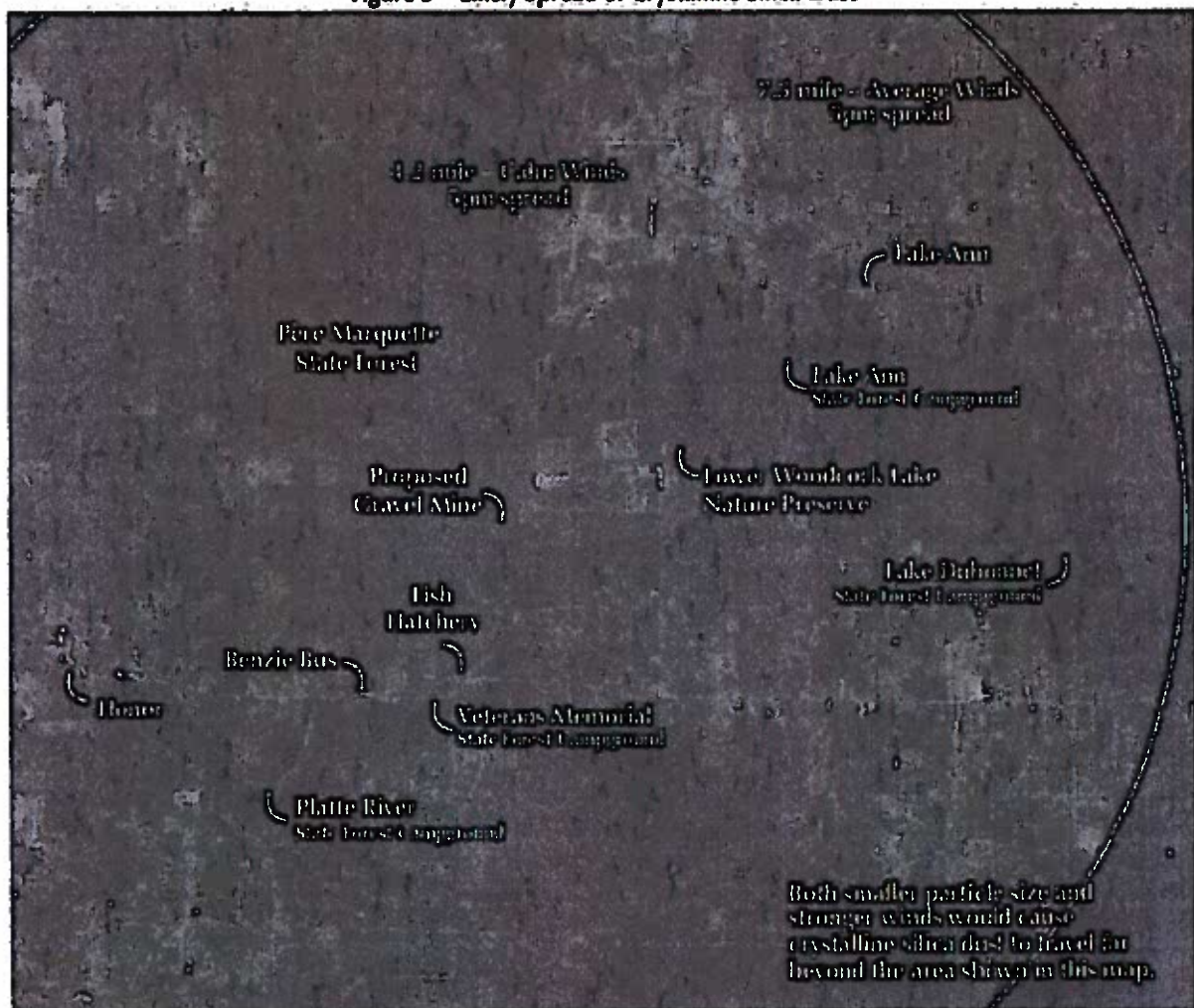
This area's Average windspeed over the past three years for May – October, the average Maximum sustained winds, and average Gusts are shown in Figure 4. The miles that silica dust can be spread relates to particulate size.<sup>11</sup>

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.





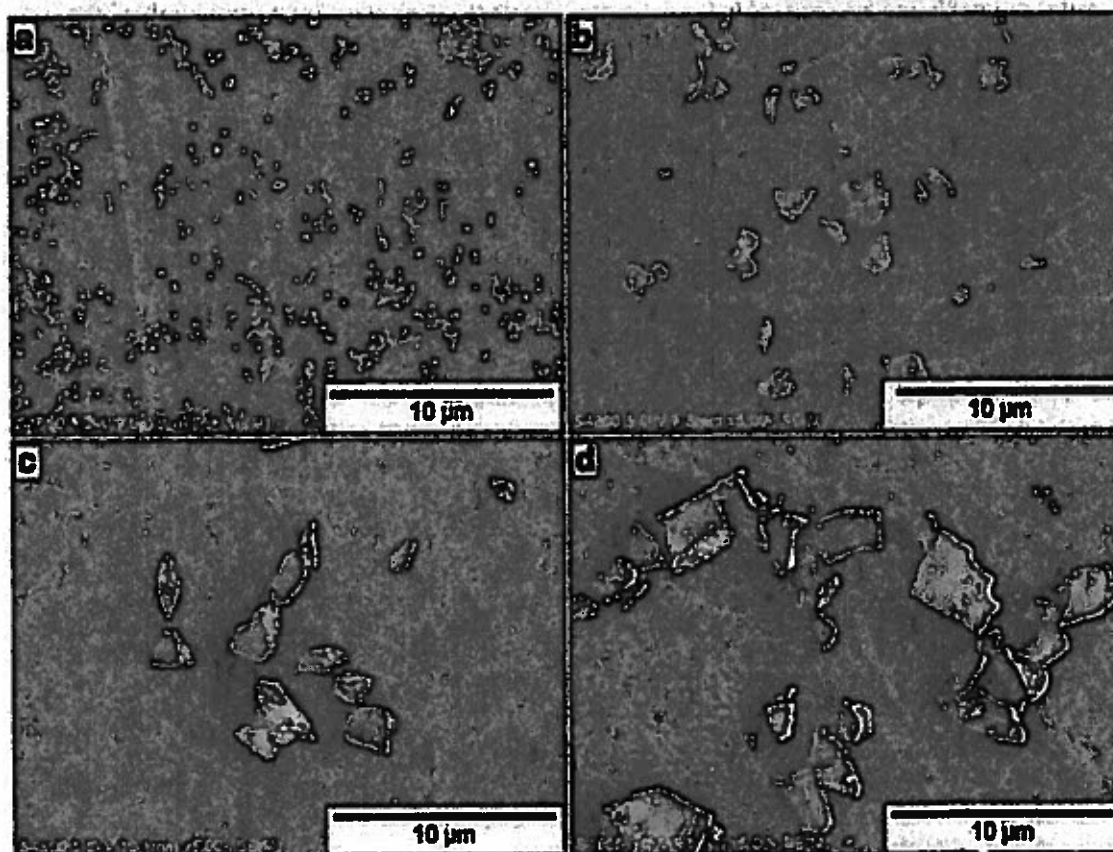
## Appendix A

**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.mailchimp.com/d250bd5a823dc5dd5e1625052/files/76fc3d95-753e-44ad-9b3a-b1ae46de08bf/5-1\\_Silica\\_Training\\_Marketing\\_Flyer.pdf](https://gallery.mailchimp.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**

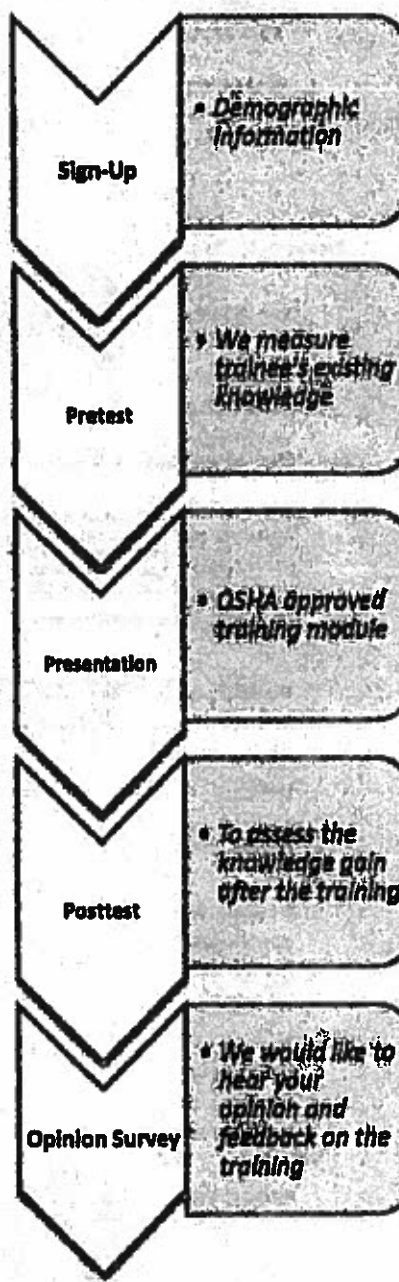
**Mumtaz A. Usman, PhD, PE**  
e-mail : [musmen@eng.wayne.edu](mailto:musmen@eng.wayne.edu)  
Phone: (313) 577-3608

**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.**



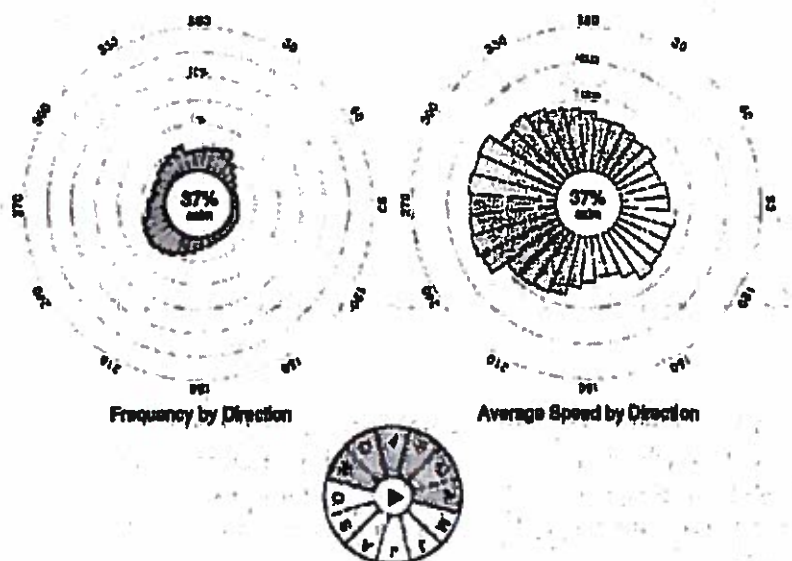
**Training contact hours:**  
**1.5 to 2 Hours**



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## KTVC: Cherry Capital Airport

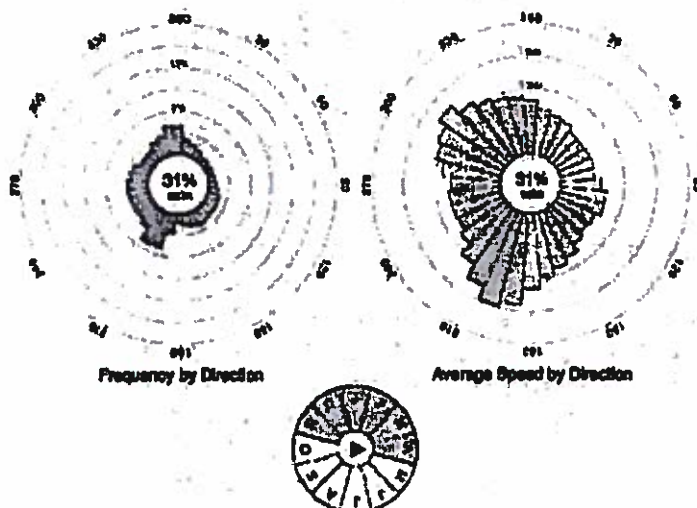


44.7430, -85.585 WeatherSpook Wunderground VFRMap FlightFinder NavMonitor

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 a break (15kts at KSPC). There are links on the station page for further information. WeatherSpook 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 [feedback@windhistory.com](mailto:feedback@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)

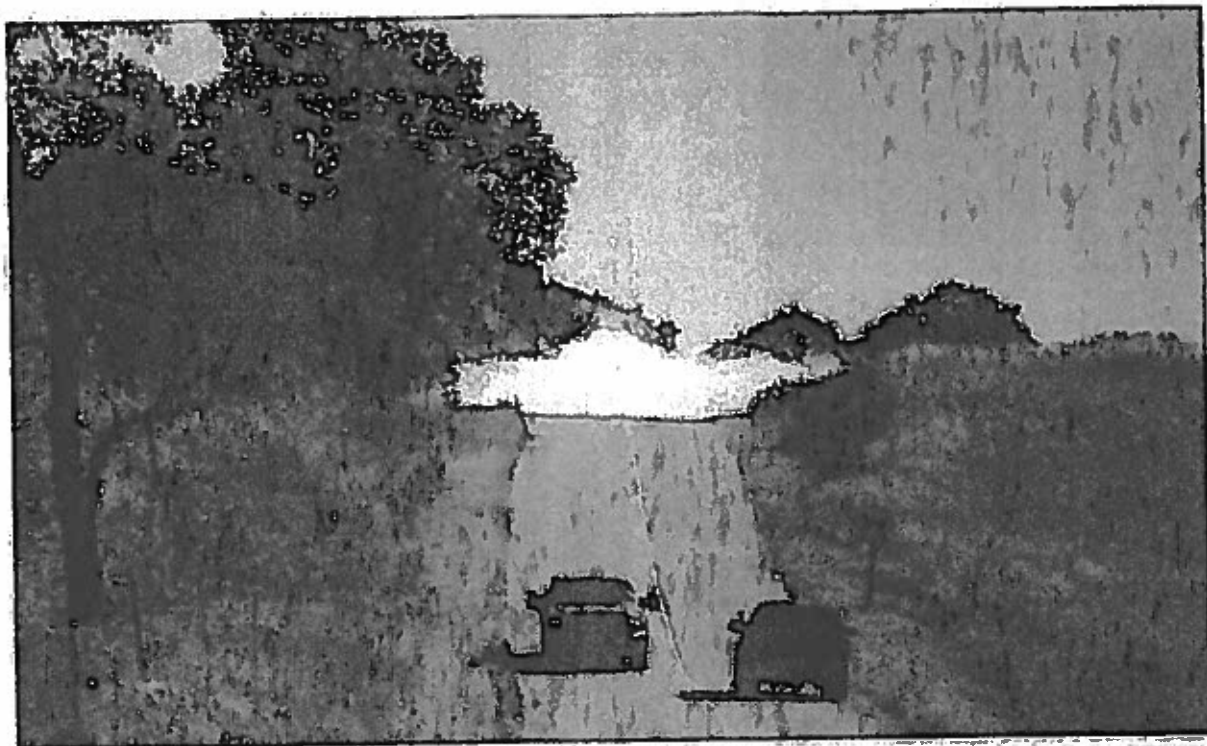
"The site alone is appalling with the noise, dust, contamination of the stream near the gravel pit, the pond, wildlife absent and natural resources. Why is this gravel pit still in operation, from failing to comply with the agreement from 21 March 2018?" "Why should the residents be subjected to all 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:

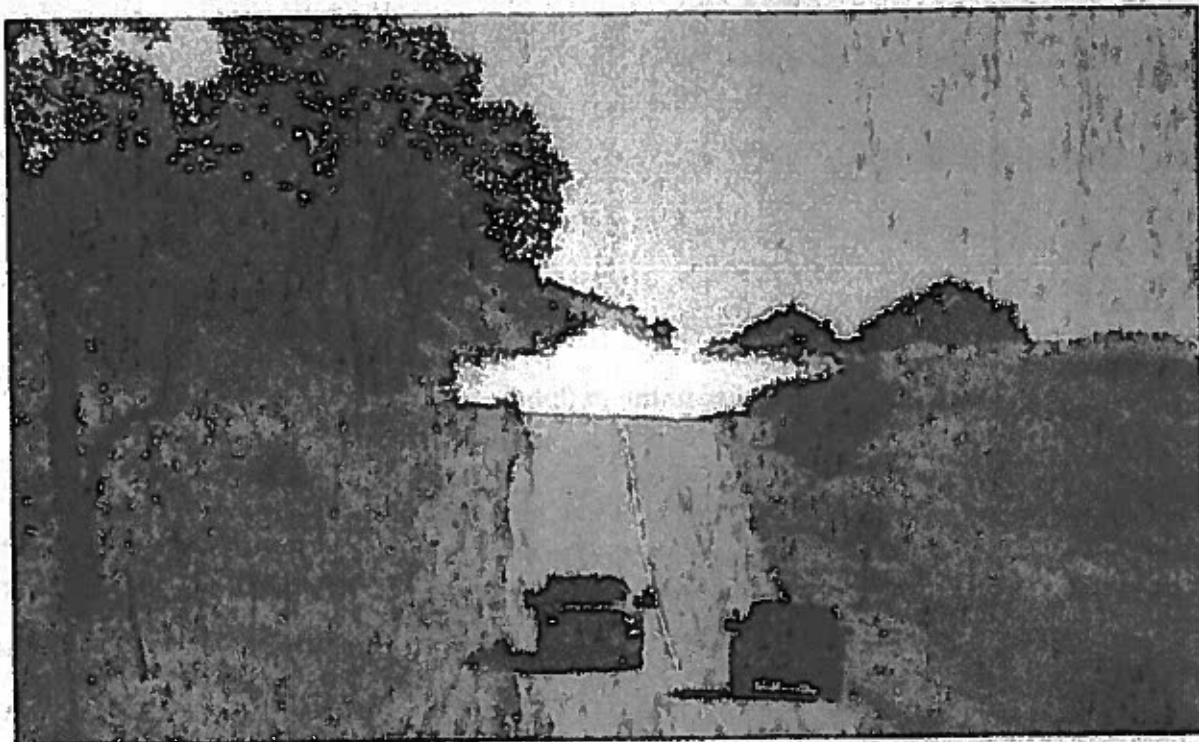
"The residents need to be able to open their windows, sit outside, children need to play outside, they need sleep, they need peace and quiet, most importantly, they need to breathe, be healthy, and they need to smile and dream again."

*Mcloy*





## Appendix D (p4)





[Home](#) → [Medical Encyclopedia](#) → Silicosis

URL of this page: [//medlineplus.gov/ency/article/000134.htm](http://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

Go LHT, Cohen RA. Pneumoconioses. In: Broaddus VC, Ernst JD, King TE, et al, eds. *Murray and Nadel's Textbook of Respiratory Medicine*. 7th ed. Philadelphia, PA: Elsevier; 2022:chap 101.

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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National Institutes of Health

**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.

---

**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

---

**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

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-----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

---

## 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

---

**From:** Blankenship, Johni  
**Sent:** Monday, October 24, 2022 11:44 AM  
**To:** Warner, Avery  
**Subject:** FW: <EXTERNAL-SENDER>gravel pit rules

---

**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

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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

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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

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**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

---

**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

---

**From:** Blankenship, Johni  
**Sent:** Tuesday, October 25, 2022 9:50 AM  
**To:** Warner, Avery  
**Subject:** FW: <EXTERNAL-SENDER>02022-36 Material site Permitting

---

**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

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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

---

**From:** Blankenship, Johni  
**Sent:** Tuesday, October 25, 2022 10:14 AM  
**To:** Warner, Avery  
**Subject:** FW: <EXTERNAL-SENDER>Proposed Ordinance 2022-36

---

**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

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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.

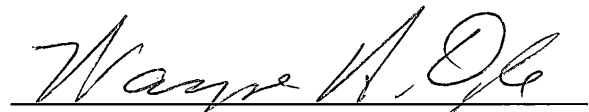
**SECTION 5.** The work group shall provide a final report to the planning commission, administration and assembly by June 5, 2018, and then discontinue unless extended by the assembly.

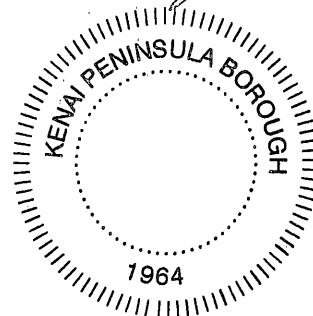
**SECTION 6.** That this resolution shall take effect immediately upon its adoption.

**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 KP.B 14.40.175 and will be subject to the remedies set forth in KP.B 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 KP.B 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

<b>CODE CHAPTER &amp; SECTION</b>	<b>VIOLATION DESCRIPTION</b>	<b>DAILY FINE</b>
KPB 21.25.040	Failure to Obtain a Permit/Material Site/Correctional community residential center/Concentrated Animal Feeding Operation	\$300.00
KPB 21.28.030	Violation of permit conditions/Concentrated Animal Feeding Operations	\$300.00
KPB 21.29.020	Failure to Obtain a counter permit/Material Site Permits	\$300.00
KPB 21.29.050	Violation of Conditional Land Use Permit Conditions/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
KPB 21.29.060	Violation of Reclamation Plan/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
<u>KPB 21.29.120</u>	<u>Failure to Provide Reclamation Plan and Proof of Bonding or Letter of Intent</u>	<u>\$300.00</u>
KPB 21.44.100	Violation of Pre-existing structures/Local Option Zoning	\$300.00
KPB 21.44.110(D)	Prohibited expansion of nonconforming use/Local Option Zoning	\$300.00
KPB 21.44.110(E)	Prohibited Change in Use/Local Option Zoning	\$300.00
KPB 21.44.110(G)	Violation of Conditions on Nonconforming Use/Local Option Zoning	\$300.00
KPB 21.44.130(C)(D)	Violation of Home Occupation Standards and Conditions/Local Option Zoning	\$300.00
KPB 21.44.130(F)	Disallowed Home Occupation/Local Option Zoning	\$300.00
KPB 21.44.135	Failure to file development notice	\$300.00
KPB 21.44.160(A)(B)	Prohibited use	\$300.00

<b>CODE CHAPTER &amp; SECTION</b>	<b>VIOLATION DESCRIPTION</b>	<b>DAILY FINE</b>
KPB 21.44.160(C)	Violation of Development Standards/Single Family Zoning/Local Option Zoning	\$300.00
KPB 21.44.165(A)(B)	Prohibited use	\$300.00
KPB 21.44.165(C)	Violation of Development Standards/Small Lot Residential Zoning/Local Option Zoning	\$300.00
KPB 21.44.170(A)(B)	Prohibited use	\$300.00
KPB 21.44.170(C)	Violation of Development Standards/Rural Residential District/Local Option Zoning	\$300.00
KPB 21.44.175(B)(C)	Prohibited Use	\$300.00
KPB 21.44.175(D)	Violation of Development Standards/Residential Waterfront	\$300.00
KPB 21.44.180(A)(B)	Prohibited Use	\$300.00
KPB 21.44.180(C)	Violation of Development Standards/Multi-Family Residential District/Local Option Zoning	\$300.00
KPB 21.44.190(A)(B)	Prohibited Use	\$300.00
KPB 21.44.190(C)	Violation of Development Standards/Industrial District/Local Option Zoning	\$300.00
KPB 21.46.030(b)	Failure to maintain bear-resistant garbage cans/Local option zone/Birch and Grove Ridge subdivisions Rural Residential District	\$300.00
KPB 21.50.100(F)	Removal of posted enforcement notice	\$300.00
KPB 21.50.100(G)	Violation of enforcement notice	\$1,000.00
KPB 21.50.130(I)	Violation of an enforcement order	\$1,000.00

**SECTION 4.** That this ordinance shall become effective upon its enactment.

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

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Brent Johnson, Assembly President

ATTEST:

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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 stormwater runoff is directed.

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

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

#### **CHAPTER 21.29. MATERIAL SITE PERMITS**

##### **21.29.010. Material extraction exempt from obtaining a permit.**

- A. Material extraction which disturbs an area of less than one acre that is not in a mapped flood plain or subject to 21.29.010(B), does not enter the water table, and does not cross property boundaries, does not require a permit. There will be no excavation within 20 feet of a right-of-way or within ten feet of a lot line.
- B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood

Service Area does not require a permit, however, operators subject to this exemption shall provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations.

- C. A prior existing use under KPB 21.29.120 does not require a material extraction permit, but a floodplain development permit is required for all activities within any mapped special flood hazard area.
- D. Material extraction incidental to site development does not require a permit when an approved site development plan is on file with the planning department. Site development plans are approved by the planning director and are valid for one year. The site development plan may be renewed on an annual basis subject to the planning director's approval.

#### **21.29.020. Material extraction and activities requiring a permit.**

- A. *Counter permit.* A counter permit is required for material extraction which disturbs no more than 2.5 cumulative acres and does not enter the water table. Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension.
- B. *Conditional land use permit.* A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. [A CLUP IS REQUIRED FOR MATERIALS PROCESSING.] A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPS and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling

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

- A. In order to obtain a counter permit or CLUP, an applicant shall first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application shall include the following items:
  - 1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;



2. Expected life span of the material site;
3. A buffer plan consistent with KPB 21.29.050(A)(2);
4. Reclamation plan consistent with KPB 21.29.060;
5. The depth of excavation;
6. Type of material to be extracted and type of equipment to be used;
7. Any voluntary permit conditions the applicant proposes. Failure to include a proposed voluntary permit condition in the application does not preclude the applicant from proposing or agreeing to voluntary permit conditions at a later time;
8. Surface water protection measures, if any, for adjacent properties designed by a 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